TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 280

GEORGE W. TABER, TREASURER OF PAYNE COUNTY, OKLAHOMA, PETITIONER,

vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

PETITION FOR CERTIORARI FILED AUGUST 12, 1936.

CERTIORARI GRANTED OCTOBER 12, 1936.

SUPREME COURT OF THE UNITED STATES

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No.

GEORGE W. TABER, TREASURER OF PAYNE COUNTY, OKLAHOMA, PETITIONER,

vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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[fol. 1]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

No. 25,794

GEORGE W. TABOR, Treasurer of Payne County, Oklahoma, Plaintiff in Error,

vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY, a Corporation, Defendant in Error

PETITION IN ERROR—Filed August 13, 1934

The said George W. Tabor, Treasurer of Payne County, Oklahoma, Plaintiff in Error, complains of said Defendant in Error for that the said Indian Territory Illuminating Oil Company, a corporation, at the May Term of the District Court of Payne County, Oklahoma, recovered a judgment by the consideration of said court against the said George W. Tabor, Treasurer of Payne County, Oklahoma, in a certain action then pending in the said court, wherein the said Indian Territory Illuminating Oil Company, a corporation, was Plaintiff and the said George W. Tabor, Treasurer of Payne County, Oklahoma, was Defendant. The original case-made, duly signed, attested and filed as hereto attached marked Exhibit "A" and made a part of this petition in error; and the said George W. Tabor, Treasurer of Payne County, Oklahoma, avers that there is error in the said record and proceedings in this to-wit:

1. That the judgment of the court is not sustained by sufficient evidence, or is contrary to law.

2. Error of law occurring at the trial, and excepted [fol. 2] to by the Plaintiff in Error.

3. Error of the court in overruling the Plaintiff in Error's demurrer to the petition of the Defendant in Error.

4. Error of the court in overruling the Plaintiff in Error's demurrer to the evidence of the Defendant in Error.

5. Error of the court in overruling the motion of the Plaintiff in Error at the close of all the evidence for a judgment in its favor.

6. Error of the court in admitting incompetent, irrelevant and immaterial testimony and evidence on behalf of the Defendant in Error, said evidence being excepted to by the Plaintiff in Error.

7. Error of the court in overruling the Plaintiff in Error's motion for a new trial.

Wherefore, Plaintiff in Error prays that said judgment so rendered be reversed, set aside and held for naught and that a judgment may be rendered in favor of the Plaintiff in Error and against the Defendant in Error and that the Plaintiff in Error be restored to all rights he has lost by the rendition of such judgment, and for such other relief as to the court may seem just.

George W. Tabor, Treasurer of Payne County, Oklahoma, by Guy L. Horton, Attorney.

[File endorsement omitted.]

[fols. 3-5] [File endorsement omitted]

IN THE DISTRICT COURT OF PAYNE COUNTY, STATE OF OKLAHOMA

No. 11774

INDIAN TERRITORY ILLUMINATING OIL COMPANY, a Corporation, Plaintiff,

vs.

GEORGE W. TABOR, Treasurer of Payne County, Oklahoma, Defendant

Casemade Filed in Supreme Court of Oklahoma August 13, 1934

Trial Judge:

Hon. Freeman E. Miller, District Judge.

Appearances:

Donald Prentice, Bartlesville, Oklahoma, for Plaintiff.

Guy L. Horton, County Attorney, Stillwater, Okla., for defendant.

[fol. 6] IN THE DISTRICT COURT OF PAYNE COUNTY, STATE OF OKLAHOMA

[Title omitted]

PETITION—Filed March 2, 1934

Comes now the plaintiff and for cause of action against the defendant alleges and states:

1. That plaintiff is and was at all times hereinafter mentioned a corporation organized and existing under and by virtue of the laws of New Jersey, and is and was duly authorized and qualified to transact business in the State of Oklahoma as a foreign corporation, and has its principal place of business in Oklahoma in the city of Bartlesville, and that the defendant, George W. Taber, County Treasurer of Payne County, Oklahoma, is and was the duly elected, qualified and acting County Treasurer of Payne County, Oklahoma, and is the officer authorized by law to collect ad valorem taxes assessed upon property located in said county and state.

2. That plaintiff is and has been at all the times herein mentioned engaged, both within and without the State of Oklahoma, in the business of producing crude petroleum and natural gas, and for the purpose of carrying on its said business, and as necessarily and properly incident [fol. 7] thereto, acquired certain real estate and oil and gas leasehold estates in Payne County, Oklahoma, and had and has certain property and equipment located thereon.

3. That on January 1, 1933, plaintiff was the owner of certain personal property consisting of oil and gas well equipment located in Eagle Township, School District #103 upon the SE 7–19N–6E, Payne County, Oklahoma, an itemized list of said equipment and its value being as follows, viz:

	Rate	Value
1 Dwelling, portable	.....	$185.83
1 Garage	.....	33.18
1 Tool house	.....	14.03
7 Engines, Gas, 25 HP	166.25	1163.75
1 pump, 4 HP	.....	62.70
1 water well equipment	.....	76.00
3 Derricks, wood, pumping	72.32	216.96
2 Derricks, Steel, pumping	95.00	190.00
2 tanks, steel—105 bbl. (Per bbl.)	.075	15.75
1 tank, steel—65 bbl. (Per bbl.)	.075	4.87
8 tanks, wood—250 bbl. (Per bbl.)	.125	250.00
389′ casing, steel—15½″	.95	369.55
9406′ casing, steel—8¼	.275	2586.65
20341′ casing, steel—6 5/8	.21	4271.61
9208′ casing, steel—5 3/16″	.165	1519.32
24836′ tubing, steel—2″	.06	1490.16
24836′ rods, sucker ¾″	.02	496.72
6200′ pipe, line—6 5/8″ csg	.15	930.00
16610′ pipe, line 2″	.02	332.20
1 trailer, truck—1½ ton	.....	96.16
Miscellaneous pipe, fittings and other property	.....	1508.31
76 bbls. oil in stock tanks—37.9° gravity	.73	55.48
Total value—property used in and around producing wells on rest. Indian Lands on which exemption is claimed		$15,869.23

[fol. 8] 4. That on said date and for some years prior thereto, plaintiff was the owner of a duly approved Departmental oil and gas mining lease covering said described land, which was the allotment of Wilson Moore, deceased, a restricted Pawnee Indian, and is now owned by Belt Short Bear, Will Justice, and Colonel Moore, a minor, restricted Pawnee Indians and heirs of Wilson Moore, deceased, and plaintiff had drilled certain wells producing oil and gas upon said leasehold, and on said date has placed the above described property and equipment thereon and was actually using the same in the operation of said wells and in the development of said leasehold and to produce oil and gas therefrom.

5. That within the time and in the manner provided by law, plaintiff rendered to the County Assessor of Payne County, Oklahoma, a list or schedule of property used by it located in Eagle Township, School District #103, Payne County, Oklahoma, on January 1, 1933, which schedule contained a list of certain property of the value of $1078.03 subject to ad valorem taxation for the tax year [fol. 9] of 1933-34, and also contained an itemized list of the property and equipment above set out, it being expressly recited therein that said property was not rendered for taxation but was set out in the schedule for the sole

and only purpose of advising the County Assessor of the ownership thereof, and that the same was not subject to ad valorem taxation for said tax year for the reason that it was used in the operation of certain wells producing oil and/or gas located upon restricted Indian Land, and that plaintiff was the owner of a Departmental oil and gas mining lease covering said land and the wells located thereon, and was acting as a Federal instrumentality and agent in the operation of said wells and the development of said lease; that said schedule also expressly recited that a judgment had been rendered in the District Court of Payne County, Oklahoma, on February 24, 1933 in case No. 10794, wherein it was decreed that none of said described property and equipment was subject to ad valorem taxation in Payne County, Oklahoma for the tax year 1932-33 for the reasons as aforesaid, a true and correct copy of said schedule is hereto attached marked exhibit "A" and made a part hereof.

6. That the County Assessor of Payne County, Oklahoma, being the officer authorized by law to assess the property located in said county for taxation, accepted said list and schedule as rendered and assessed the property admitted therein to be subject to ad valorem taxation for the tax year 1933-34 as of the value of $1078.03, and duly con- [fol. 10] sidered the taxability of the above described property and equipment and determined that the same was not subject to taxation for the reasons above set out and did not assess the same for the tax year of 1933-34, and notified the plaintiff that the entire assessed valuation of the personal property owned by the plaintiff and located in Eagle Township, School District No. 103, Payne County, Oklahoma, for said tax year was the sum of $1078.03.

7. Plaintiff further alleges that the assessed valuation of the property owned by plaintiff and located in said township and school district which was extended on the tax rolls was after the assessment aforesaid, surreptitiously, illegally and improperly increased to the sum of $16,947.26 for said tax year in that the above described property and equipment was assessed and placed upon the tax rolls of Payne County, Oklahoma, as of the valuation of $15,869.23; that said property and equipment was assessed and placed upon the tax rolls, and that the assessed valuation of the property owned by plaintiff and located in said township

and school district was thus increased without authority at law and without any notice whatsoever to plaintiff, and without its knowledge or consent, and that said illegal assessment and increase was not made by the Board of Equalization acting for Payne County, Oklahoma, for said tax year, or by any other agency or individual authorized by law.

8. Plaintiff alleges that it did not know that said described property and equipment had been assessed for taxa- [fol. 11] tion for said tax year, or that the valuation of the property owned by it and located in said township and school district had been so increased and had no means of ascertaining or discovering said assessment or increase until time for payment of taxes, and that it did not discover said assessment and increase until the month of January, 1934, when the taxes assessed for said tax year were due and payable, and in order to pay the taxes levied upon its property plaintiff secured a tax statement from the defendant herein, which disclosed that said described property and equipment had been assessed and placed upon the tax rolls and the value of the property owned by plaintiff in said township and school district had thus been increased; that at the time of discovery the Payne County Board of Equalization had long since adjourned and by reason of said illegal assessment and increase in valuation, plaintiff was denied the right to appear before the Board of Equalization of Payne County, Oklahoma, or any other board or person from which an appeal is provided by law, and because plaintiff had not given notice of said illegal and unlawful assessment and increase plaintiff has been deprived of due process of law.

9. Plaintiff further alleges that at the time and in the manner provided by law, and before delinquency and on February 2, 1934, for the purpose of protecting itself from the assessment of penalties provided by the statutes of this state, and so that the illegal and unlawful tax assessment and levy made in pursuance thereto as aforesaid would not constitute a lien upon the real estate owned by plaintiff [fol. 12] in said county as aforesaid, and so said illegal and unlawful taxes would not constitute a cloud upon the title to all property owned by said plaintiff in said county, and under duress and compulsion by reason thereof, plaintiff paid to said defendant the sum of $676.72, being the amount

of taxes illegally and unlawfully levied as aforesaid, under protest, and at the same time notified the defendant to use no part of said sum so paid but to hold the same separate and apart from any other funds and taxes collected, received or held by said defendant pending such litigation as might be instituted. A true and correct copy of said protest and notice is hereto attached marked exhibit "B" and made a part hereof.

10. Plaintiff alleges that on January 1, 1933, the above described property and equipment was located upon the restricted Pawnee Indian Oil and gas mining leasehold estate above described and was being actually used in and around producing wells upon said described leasehold and in the operation of said leasehold and in the production of oil and gas therefrom, and that all of said property and equipment is and was a necessary adjunct to the production of oil and/or gas, without the use of which plaintiff could not produce oil and/or gas from said leasehold; that plaintiff in the exploration and development of said lease, in the production of oil and gas therefrom, in the placing of said described property and equipment thereon and in the use of the same for such purposes was and is at all times herein [fol. 13] mentioned operating as a Governmental agency and instrumentality, and said property and equipment is not subject to ad valorem taxation in Payne County, Oklahoma, as taxation thereof would constitute a tax upon and interference with the operation of a Governmental agency in the performance of its governmental functions, and the assessment of said property and equipment for said tax year as aforesaid is illegal and unlawful.

11. Plaintiff alleges that on February 24, 1933 in case No. 10,794 the District Court of Payne County, Oklahoma rendered judgment wherein it was adjudged and decreed that said described property and equipment was not subject to ad valorem taxation in Payne County, Oklahoma, as of January 1, 1932 for the tax year of 1932-33, and plaintiff alleges that there has been no change in the use of said property and equipment since said judgment or since January 1, 1932, and further states that said property and equipment was used for the same identical purposes on January 1, 1933, as on January 1, 1932, and that said judgment is res judicata, and that the attempted assessment thereof for the tax year of 1933-34 is illegal and unlawful.

A true and correct copy of said judgment is hereto attached marked exhibit "C" and made a part hereof. Plaintiff further states that the taxes paid as aforesaid in the sum of $676.72 have been illegally and unlawfully exacted from this plaintiff and plaintiff is entitled to recover the same from defendant.

[fol. 14] Wherefore, premises considered, plaintiff prays judgment against defendant in the sum of $676.72 with interest and costs of this action.

W. P. McGinns, Archibald Bonds, Donald Prentice, Bartlesville, Oklahoma, Attorneys for Plaintiff.

[fol. 15] EXHIBIT A TO PETITION

Inventory of Property

Owned by Indian Territory Illuminating Oil Company, P. O. Address: Drawer L, Bartlesville, Oklahoma, and rendered -or assessment of taxes for year 1933, by E. B. Emenhiser, Secretary to the County Assessor of Payne County, Oklahoma.

Summary of Personal Property

By Townships and School Districts as Shown on Attached Sheets

School District	Eagle Township	Value
No. 103	$1,078.03	$ 1,078.03
Total value extended for assessment		$ 1,078.03
Property used in and around producing wells on restricted Indian lands		15,869.23
Property used in and around producing wells on Commercial leases		7,680.57
Total Value—Property used in and around producing wells on which exemption is claimed		23,549.80

See Appendix "A"—Restricted Indians Lands.
See Appendix "B"—Commercial leases.

(Stamp.) Approved, Originating Dept. VH. Legal Dept. Execut'n. D P.

I hereby acknowledge receipt of the original hereof, filed with me this 1 day of May, 1933.

J. H. Blankenship, Assessor for Payne County, Okla.

STATE OF OKLAHOMA,
County of Washington, ss:

I, E. B. Emenhiser, being first duly sworn, upon oath depose and say, that I am the Secretary of Indian Terri- [fol. 16] tory Illuminating Oil Company; that the principal business of said corporation in Oklahoma is transacted in the county of Washington, Oklahoma, where said corporation is located; that the foregoing return constitutes a full, complete and true statement of all property—real, personal or credits, owned, used, possessed or controlled by said corporation on the first day of January, 1933, and subject to assessment for ad valorem taxes in Payne County, Oklahoma, and that no property—real, personal or credits, which is subject to assessment for ad valorem taxes in said county has been omitted, and that the values as stated represent the fair, taxable values of said property; that the report as required by Section 9962 (C. O. S. 1921) will be filed with the County Assessor of Washington County, Oklahoma as provided by law.

E. B. Emenhiser, Secretary.

Subscribed and sworn to before me this 28 day of April, 1933. Emmet Ely, Notary Public. My commission expires July 11, 1935. (Seal.)

[fol. 17] County Payne

Equipment in and Around Exhausted Oil Wells

Located in Eagle Township, School District No. 103

SE/4 Section 7–19–6

Wilson-Moore Farm, Well No. 8

1 Pumping Unit w/ 10 HP Engine	$ 326.75
1 Tank, Wood, 250 bbl	31.25
3087′ Casing—5 3/16″	189.59
2931′ Casing—6 5/8″	234.73
3150′ Tubing 2″	283.50
3150′ Sucker rods 3/4″	12.21
Total value—Eagle Township, S.D. No. 103	1078.03

Total value extended for assessment—Eagle Township, 1,078.03.

Total value—Equipment in and around exhausted oil wells, $1,078.03.

[fol. 18] County Payne

Steel Storage Tanks Located in Eagle Township, School District No. 91

Steel Storage Tanks Located on E/2 NE/4 Section 35–19N–SE on Spencer Tank Farm—Our Fee. #31

1025	0–5	55,000 bbls.	Empty
1026	"	"	"
1027	"	"	"
1028	"	"	"
1029	"	"	"
1030	"	"	"
1031	"	"	"
1040	"	"	"
1041	"	"	"
1042	"	"	"
1043	"	"	"

11—55,000 bbl. tanks or 605,000 bbls, .05

"Reported in real property return."

Total value—Eagle Township, S. D. No. 91, $0.

Located in Eagle Township, School District No. 102

Steel Storage Tanks Located on East 56.5 Acres of E/2 SE/4 Section 35–19N–6E on Spencer Tank Farm—Our fee #31

1024	0–5	55,000 bbls.	Empty
1032	"	"	"
1033	"	"	"
1034	"	"	"
1035	"	"	"
[fol. 19] 1036	"	"	"
1037	"	"	"
1038	"	"	"
1039	"	"	"

9—55,000 bbl Tanks or 495,000 bbls .05

"Reported in Real property return"

Total value—Eagle Township, S. D. No. 102, $0.

Total value—Eagle Township, $ 0.

County Payne

Steel Storage Tanks—Continued.

Located in Union Township, School District No. C–6

Steel Storage Tanks Located on W/2 SE/4 Section 15–17N–5E, on Vockrodt Tank Farm: Our Fee $156

507	0–5	55,000 bbl.	Empty
516	"	"	"
517	"	"	"
518	"	"	"
519	"	"	"
528	"	"	"
529	"	"	"
530	"	"	"
531	"	"	"

9 55,000 bbl. tanks or 495,000 bbls .05

"Reported in Real Property Return"

Total value—Union Township, S. D. No. C-6	$ 0
Total value—Union Township	$ 0
Total value—Steel Storage tanks	$ 0
(Reported in real property return.)	

[fol. 20] Indian Territory Illuminating Oil Company, Payne County, Oklahoma

List and Value of Property Used in and Around Producing Wells on Restricted Indian Lands

Appendix "A"

This list or schedule of personal property is made for the sole and only reason of apprising the Assessor of Payne County, Oklahoma, of the ownership of said property, and the Indian Territory Illuminating Oil Company protests and objects to the placing of any said property on the tax rolls of Payne County, Oklahoma, for the tax year 1933-34, and asserts that none of said property is subject to ad valorem taxation for the reason that the same is used in the operation of certain wells producing oil and/or gas, located on restricted Indian lands. That the Indian Territory Illuminating Oil Company is the owner of departmental oil and gas leases covering said lands and the wells, located thereon, and is acting as a federal instrumentality and agent in the operation of said wells and the development of said leases.

Your attention is specifically directed to the judgment rendered by the Hon. Freeman E. Miller, Judge of the District Court of Payne County, Oklahoma, on the 24th day of February, 1933, in case No. 10794, wherein it was held that none of said equipment and property was subject to ad valorem taxation for the tax year 1931-32 for the reasons above set forth.

[fol. 21]

Located in Eagle Township, School Distfict No. 103

Personal Property situated on SE/4 Section 7-19N-6E, on Wilson-Moore farm, used in connection with the operation of well Nos. 1-2-3-4-5-6-7 and 9, for the production of Oil and natural gas.

	Rate	Value
1 Dwelling, portable	.....	$185.83
1 Garage	.....	33.18
1 Tool house	.....	14.03
7 Engines, Gas, 25 HP	166.25	1163.75
1 pump, 4 HP	.....	62.70
1 water well equipment	.....	76.00
3 Derricks, wood, pumping	72.32	216.96
2 Derricks, Steel, pumping	95.00	190.00
2 tanks, steel—105 bbl. (Per bbl.)	.075	15.75
1 tank, steel—65 bbl. (Per bbl.)	.075	4.87
8 tanks, wood—250 bbl. (Per bbl.)	.125	250.00
389' casing, steel—15½"	.95	369.55
9406' casing, steel—8¼"	.275	2586.65
20341' casing, steel—6 5/8"	.21	4271.61

	Rate	Value
9208′ casing, steel—5 3/16″	.165	1519.32
24836′ tubing, steel—2″	.06	1490.16
24836′ rods, sucker ¾″	.02	496.72
6200′ pipe, line—6 5/8″ csg.	.15	930.00
16610′ pipe, line 2″	.02	332.20
1 trailer, truck—1½ ton	.....	96.16
Miscellaneous pipe, fittings and other property	.....	1508.31
76 bbls. oil in stock tanks—37.9° gravity	.....	55.48
Total value—property used in and around producing wells on rest. Ind. Lands on which exemption is claimed		$15,869.23

[fol. 22] Indian Territory Illuminating Oil Company, Payne County, Oklahoma

List and Value of Property Used in and Around Producing Wells on Commercial Leases

Appendix "B"

Property used in and around producing wells, in connection with the production of oil and/or gas upon which Gross Production Taxes are paid, and necessary to economical production thereof, including the following:

Wells of various construction—including casing, casing shoes, float collars, clamps, supporting and holddown devices, various control heads, Christmas tree hookups, control and regulating devices, tubing, tubing supports, tubing catchers, flow devices, tubing head connections, sucker rods, well pumps stuffing boxes, polish rods, polish rod clamps, beam hangers, rigs, relegs, run arounds, fourble platforms, crown blocks, lines, various rig irons, bull wheels, band wheels, calf wheels, sand reels, counter balances, equipment incidental to installation and use thereof; cleanout units, countershaft clutches, belt and engine houses, engines, clutches, outboard bearings, engine pipe and connections, auxiliary pumps, air compressors, air tanks, regulators, gasometers, volume tanks, circulating tanks, electric wiring, belts and idlers.

Pipe and connections from well head to separator, separators and connections, towers and/or platforms for same, vent lines and fittings, oil lines and fittings, from separators to batteries of working tanks and/or treating plants.

[fol. 23] Tank batteries of various construction—consisting of all or some of the following: working tanks, stairways, walkways, ground and riser pipe and connections,

drain connections and pipe, sales connections, fire protection systems and devices, pumps with connecting steam, oil and waste pipe and fittings.

Treating plants of various construction—consisting chiefly of tanks or containers, pumps, chemical, heat or wash treating devices, with connecting pipe and fittings of oil, steam and water waste from boiler houses.

Boiler batteries of various construction—consisting of all or part of the following: boilers, burners, boiler foundations, boiler houses, fuel, water and steam pipe with fittings, control devices, water heating devices, pumps, generators and electric wiring.

Lease water wells of various construction—consisting of various parts of the following: casing, casing shoes, clamps, heads, tubing, tubing supports, tubing heads, flow devices, pumps, well rods, stuffing boxes, and connections; jacks, pumping heads, engines, motors and compressors, lease water supply tanks and connections, fire fighting systems of various kinds and constructions, houses, hose, hydrants with supply pipe, fire engines and apparatus, hand or motor powered chemical and mechanical.

Tool houses, material houses, dockes, sheds, dog houses and oil houses.

[fol. 24] All the above mentioned tools, supplies and equipment are not necessarily in and around any one well, but a portion is in and around each, as the supplies, tools, and equipment differ on each individual type of well.

Lease name	Description	Number of Wells
School land.....	SE/4 Section 35–20–4	1

Property used in and around producing wells on commercial leases on which exemption is claimed, $7,680.57.

[fol. 25] EXHIBIT B TO PETITION

January 23, 1934.

Mr. George W. Taber, County Treasurer of Payne County, Stillwater, Oklahoma.

Re Payment of Taxes of Indian Territory Illuminating Oil Company, 1933-34 Under Protest

DEAR SIR:

The Indian Territory Illuminating Oil Company was on January 1, 1933, the owner of and in possession of certain

personal property in Payne County, Oklahoma, described as follows:

"Located in Eagle Township, School District No. 103

Personal Property situated on SE/4 Section 7-19N-6E, on Wilson-Moore farm, used in connection with the operation of well Nos. 1-2-3-4-5-6-7 and 9, for the production of Oil and natural gas.

	Rate	Value
1 Dwelling, portable	.....	$185.83
1 Garage	.....	33.18
1 Tool house	.....	14.03
7 Engines, Gas, 25 HP	166.25	1163.75
1 pump, 4 HP	.....	62.70
1 water well equipment	.....	76.00
3 Derricks, wood, pumping	72.32	216.96
2 Derricks, Steel, pumping	95.00	190.00
2 tanks, steel—105 bbl. (Per bbl.)	.075	15.75
1 tank, steel—65 bbl. (Per bbl.)	.075	4.87
8 tanks, wood—250 bbl. (Per bbl.)	.125	250.00
389' casing, steel—15½"	.95	369.55
[fol. 26]		
9406' casing, steel—8¼"	.275	2586.65
20341' casing, steel—6 5/8"	.21	4271.61
9208' casing, steel—5 3/16"	.165	1519.32
24836' tubing, steel—2"	.06	1490.16
24836' rods, sucker ¾"	.02	496.72
6200' pipe, line—6 5/8" csg	.15	930.00
16610' pipe, line 2"	.02	332.20
1 trailer, truck—1½ ton	.....	96.16
Miscellaneous pipe, fittings and other property	.....	1508.31
76 bbls. oil in stock tanks—37.9° gravity	.73	55.48
Total value—property used in and around producing wells on rest. Ind. Lands on which exemption is claimed		$15,869.23

That the same was listed and filed with the tax assessor of said county and exemption from ad valorem taxation was claimed because said property was used in and around producing oil wells upon restricted Indian lands and was being used as a Federal instrumentality, and for the further reason it had been found and adjudged by the District Court of Payne County, Oklahoma to be exempt from ad valorem taxation because said property was used as a Federal instrumentality.

That when the Indian Territory Illuminating Oil Company filed its list of property with the assessor, same was not placed on the tax rolls; that the representatives of this company appeared before the County Equalization Board [fol. 27] and discussed the taxability of said property and the same was not placed on the tax rolls by the County Equalization Board, neither was said property placed on

the tax rolls by order of the State Board of Equalization; that the first information this company had that said property was on the tax rolls was on or about January 5, 1934, when it received a statement from the county treasurer of said county to that effect, and that the same was subject to ad valorem taxes in the sum of $676.72.

We, therefore, hand you herewith the sum of $676.72, same being paid under protest, and you are notified and requested to hold said fund separate and apart from any other funds and taxes collected, received or held by you pending such litigation as may be instituted.

That from such actions as were taken to subject this company's property to ad valorem taxation, no appeal is provided, and you are further notified that said company will, within the next thirty days, institute suit for the recovery of said taxes, for the reason that said property is not taxable on an ad valorem basis on account of its use as a Federal instrumentality and because it has been adjudged to be exempt from ad valorem taxation on account of such use.

Very truly yours, Indian Territory Illuminating Oil Company, by. (Signed) E. B. Emenhiser.

Reg. Mail.

I hereby acknowledge receipt of the original hereof filed with me this 2 day of Feb. 1934.

(Signed) Geo. W. Taber, Treasurer of Payne County, Oklahoma.

[fol. 28] EXHIBIT C TO PETITION

IN THE DISTRICT COURT OF PAYNE COUNTY, OKLAHOMA

No. 10794

In the Matter of the Assessment of Personal Property of the Indian Territory Illuminating Oil Company, a Corporation, for the Year 1931

Journal Entry

This cause coming on to be heard this 24th day of February, 1933, pursuant to regular assignment for trial be-

fore Freeman E. Miller, Judge of the District Court of Payne County, Oklahoma, and the Indian Territory Illuminating Oil Company, a corporation, appearing by Donald Prentice, its attorney, and Guy Horton, County Attorney of Payne County, Oklahoma, appearing, and all parties announcing ready for trial and the court after hearing the argument of counsel and being fully advised in the premises, and upon examination and review of the transcript of appeal from the decision of the Payne County Board of Equalization, filed in this cause, and upon consideration thereof finds:

That on January 1, 1931, the Indian Territory Illuminating Oil Company, a corporation, was the owner of 72,207 barrels of crude oil of 37° gravity, from one to five years old, which was located in School District No. 91, Eagle Township, Payne County, Oklahoma, on said date and was stored in tanks upon the east half of the northeast quarter of section 35, township 19 north, range 6 east, Payne County, Oklahoma, and was of the value of $42,602.13; and was also the owner of a duly approved de-
[fol. 29] partmental oil and gas mining lease covering the southeast quarter of section 7, township 19 north, range 6 east, Payne County, Oklahoma, being the allotment of Wilson Moore, deceased, a restricted Pawnee Indian, said land now being owned by Belt Short Bear, Will Justice and Colonel Moore a minor, restricted Pawnee Indians and heirs of the said Wilson Moore, deceased; that the Indian Territory Illuminating Oil Company, a corporation drilled certain wells producing oil and gas upon said land, and on January 1, 1931, had placed certain property, equipment and improvements upon said land, which was used in the operation of said wells and in the exploration and development of said land and to produce and preserve the oil and gas therefrom in order to comply with the terms of said oil and gas mining lease, an itemized list of said property and its location being as follows:

Quantity	Article of property	Rate	Value	Amount Extended for Assessment
1	Dwelling, portable	.....	$256.95	
1	Garage	.....	45.87	
1	House, tool	.....	20.48	
9	Engines, gas 25 HP	175.00	1575.00	
1	Pump, 4 HP	.....	80.00	
	Water well equipment 1 well	.....	101.70	
8	Derricks, pumping wood	100.00	800.00	
1	Derrick, pumping wood	.....	100.00	
2	tanks, steel 105 bbl	.15	31.50	
[fol. 30]				
1	Tank, steel, 65 bbl	.15	9.75	
9	Tanks, wood 250 bbl	.25	562.50	
389′	Casing, 15½″—steel	1.00	389.00	
9406′	Casing, 8¼″—steel	.29	2727.74	
23272′	Casing, 6 5/8″ steel	.225	5236.20	
12295′	Casing 5 3/16″ steel	.175	2151.62	
27986′	Tubing 2″—steel	.06	1679.16	
27986′	Rods, sucker—¾″	.02	559.72	
6200′	Pipe, line (6 5/8 csg.)	.225	1395.00	
16610′	Pipe, line, 2″	.05	830.50	
	Miscl. Pipe fittings, supplies and all other property	.....	1984.87	
	Total value School District No. 103, Eagle Township			$20,537.56

The court further finds that the Indian Territory Illuminating Oil Company, a corporation, filed a tax return for the taxable year of 1931 with the County Assessor of Payne County, Oklahoma, as provided by law, and that the same contained a list of all property owned by said corporation in said county on January 1, 1931 and included the above described crude oil and the property, equipment and improvements located upon said restricted Pawnee Indian oil and gas leasehold; that in said tax return the said crude oil was claimed to be exempt from taxation for the reason that it had been produced from a restricted Seminole Indian allotment located in Seminole County, Oklahoma, and that in the production of said oil the Indian [fol. 31] Territory Illuminating Oil Company, a corporation, was acting as a governmental instrumentality; that the above itemized property, equipment and improvements were also claimed to be exempt from taxation for the reason that the same was used in the development and operation of the aforesaid departmental oil and gas leasehold estate covering the above described restricted Pawnee Indian land in order to produce oil and gas therefrom, and

that the Indian Territory Illuminating Oil Company, a corporation, was using the same in the operation of said leasehold as a governmental agency and instrumentality.

The court further finds that the County Assessor placed all of said property on the tax rolls of Payne County, Oklahoma and assessed the same for taxation, and that thereafter the Indian Territory Illuminating Oil Company, a corporation, filed objections to such assessment with the Board of Equalization of Payne County, Oklahoma; that said objections were duly heard by said Board as provided by law and the same were denied and overruled; that the Indian Territory Illuminating Oil Company, a corporation, paid the taxes levied upon said property under protest and has duly perfected an appeal to this court as provided by law, and that this court has jurisdiction of this cause.

The court further finds that the above described 72,207 barrels of crude oil are subject to taxation as of January 1, 1931, and that the objections of the Indian Territory Illuminating Oil Company, a corporation, should be denied [fol. 32] and overruled and the acts of the County Assessor and Board of Equalization of Payne County, Oklahoma, in placing said crude oil on the tax rolls of said county and assessing the same for ad valorem taxes for the taxable year of 1931 should be affirmed, and that the taxes upon said oil in the amount of $769.04 heretofore paid under protest by the Indian Territory Illuminating Oil Company, a corporation, have been legally collected by the County Treasurer of Payne County, Oklahoma.

The court also finds that on January 1, 1931, the above itemized property, equipment and improvements were located upon said restricted Pawnee Indian oil and gas leasehold and were being actually used in and around producing wells upon said described restricted land and in the operation of said oil and gas mining lease and in the production of oil and gas therefrom, and that all of said property is a necessary adjunct to the production of oil and gas without which the Indian Territory Illuminating Oil Company, a corporation, could not produce oil and gas under the terms of said departmental oil and gas lease.

The court further finds that the Indian Territory Illuminating Oil Company, a corporation, in the exploration and development of said lease and in the production of oil and gas therefrom, and in the placing of said described prop-

erty, equipment and improvements thereon and in the use of the same for such purposes was and is operating as a governmental agency and instrumentality, and that the taxation of the same would constitute a tax upon and inter- [fol. 33] ference with the operations of a governmental agency in the performance of its governmental function.

The court further finds that the objections of the Indian Territory Illuminating Oil Company, a corporation, to the taxation of said property should be sustained and the action of the County Assessor and Board of Equalization of Payne County, Oklahoma, in placing said property on the tax rolls of said county and assessing the same for taxation as of January 1, 1931, was without authority of law and the same should be stricken from the tax rolls and the order and decision of the Board of Equalization of Payne County, Oklahoma, should be vacated and annulled and the taxes levied upon such property and heretofore paid under protest by the Indian Territory Illuminating Oil Company, a corporation, in the amount of $771.40 have been illegally collected and the County Treasurer of Payne County, Oklahoma, should be ordered and directed to immediately refund said amount, together with interest thereon as provided by law to the Indian Territory Illuminating Oil Company, a corporation.

It is, therefore, ordered, adjudged and decreed, by the court that the above described 72,207 barrels of crude oil owned by the Indian Territory Illuminating Oil Company, a corporation, as aforesaid are subject to ad valorem taxation in Payne County, Oklahoma for the year 1931, and the objections of the Indian Territory Illuminating Oil Company, a corporation to the taxation of said oil should be and are hereby denied and overruled, and the action of the [fol. 34] County Assessor and the Board of Equalization of Payne County, Oklahoma, in placing said crude oil on the tax rolls of said county and assessing the same for taxation as of January 1, 1931, should be and is hereby affirmed and the taxes levied upon said oil in the amount of $769.04 heretofore paid by the Indian Territory Illuminating Oil Company, a corporation, under protest have been legally collected by the County Treasurer of Payne County, Oklahoma.

It is further ordered, adjudged and decreed, by the court that the Indian Territory Illuminating Oil Company, a

corporation, in the exploration, development and operation of the above described departmental oil and gas mining lease covering said described restricted Pawnee Indian land and in the placing of the above itemized property, equipment and improvements thereon and in the use of the same, is and has been acting as a governmental agency and instrumentality, and that said property is a necessary adjunct to the operation of said lease and to the production of oil and gas therefrom, and that the taxation of same would constitute a tax upon and interference with the operations of a governmental agency in the performance of its governmental functions, and that the same is not subject to taxation in Payne County, Oklahoma for the year 1931.

It is further ordered, adjudged and decreed, by the court that the action of the County Assessor and Board of Equalization of Payne County, Oklahoma, in placing said de-[fol. 35] scribed property, equipment and improvements upon the tax rolls of said county and assessing the same for taxation for the year 1931, was without authority of law and the same should be stricken from said tax rolls and the order of the Board of Equalization of said county ordering said property to be placed on the rolls should be and is hereby reversed, vacated and annulled.

It is further ordered, adjudged and decreed by the court that the taxes in the amount of $771.40 levied upon said property, equipment and improvements for the year 1931 and heretofore paid under protest by the Indian Territory Illuminating Oil Company, a corporation, were illegally collected and the County Treasurer of Payne County, Oklahoma, is hereby ordered and directed to immediately refund said amount, together with interest thereon as provided by law, to the Indian Territory Illuminating Oil Company, a corporation.

Freeman E. Miller, Judge.

O.K. Guy L. Horton, County Attorney, Donald Prentice, Attorney for Indian Territory Illuminating Oil Company, a corporation.

[File endorsement omitted.]

[fols. 36 & 37] Summons and return omitted in printing.

[fol. 38] IN THE DISTRICT COURT OF PAYNE COUNTY

[Title omitted]

DEMURRER—Filed March 9, 1934

Comes now the defendant above named and demurs to the petition of the plaintiff above named filed herein, for the reason that said petition does not state facts sufficient to constitute a cause of action in favor of said plaintiff and against this defendant.

That said petition shows on its face that the plaintiff is not entitled to the relief prayed for in said petition.

Guy L. Horton, County Attorney, Payne County, Okla.

[fol. 39] [File endorsement omitted.]

IN DISTRICT COURT OF PAYNE COUNTY

ORDER OVERRULING DEMURRER—April 3, 1934

[Title omitted]

The demurrer to petition in above cause is by the court overruled and exceptions allowed and ten days given in which to answer.

[fol. 40] IN THE DISTRICT COURT OF PAYNE COUNTY

[Title omitted]

ANSWER—Filed April 9, 1934

Comes now the defendant above named and for his answer to the petition of the plaintiff above named filed herein, denies each and every material allegation therein contained.

Guy L. Horton, County Attorney, Payne County, Okla., Attorney for the Defendant.

[File endorsement omitted.]

[fol. 41] IN DISTRICT COURT OF PAYNE COUNTY

Transcript of Evidence

And thereafter and on the 26th day of April 1934 this case comes on for trial pursuant to the assignment thereof, the plaintiff being present by Donald Prentice, its attorney and the defendant is present by Guy L. Horton, County Attorney of Payne County, Oklahoma, and both sides announce ready for trial, and the following record is made before the Court without the intervention of a jury, to-wit:

By Mr. Prentice: If the Court please, these taxes are for the year 1933 and it is the position of the plaintiff that they are the owner of this departmental restricted lease and that they are using this equipment in the production of oil and gas, and that it is necessary in the production of the oil and gas, and are using the equipment in the operation as a government instrumentality, and the taxation of this equipment by Payne County would be a tax upon a governmental instrumentality. This same point was urged to your Honor on the prior year, we take the position—

By the Court: The same old question John Marshall raised away back there.

By Mr. Prentice: Yes, sir. We also take the position that your former decree in that case, is res adjudicata of this year's tax for the reason there has been no change in the use of the property and that your Honor has already determined that the plaintiff is a governmental instrumentality, and their use of this property, using the same as such, that it is not subject to ad valorem taxation.

[fol. 42] By the Court: It would be a poor court that is always bound by its former opinion, wouldn't it?

By Mr. Horton: The defendant takes the position in this case that the property in this case is the property of the Indian Territory Illuminating Oil Company and that no part of it is owned by the Indian who is the owner of the land, and that a taxation of this property would not be the taxation of the governmental agency.

By the Court: What kind of property is it?

By Mr. Horton: It is property used, consisting of derricks and tubing and casing and tanks, sucker rods and a portable dwelling and garage.

V. L. HUNT, is thereupon called as a witness on behalf of the plaintiff, and having been duly sworn to tell the truth, the whole truth and nothing but the truth, testifies as follows, to-wit:

Direct examination.

By Mr. Prentice:

Q. State your name?
A. V. L. Hunt.
Q. Where do you live?
A. Bartlesville.
Q. What is your business?
A. I have charge of the tax department of the I. T. I. O.
[fol. 43] Q. What are your duties as tax man for the I. T. I. O.?
A. To compile all renditions taken from the proper authorities and make all tax payments.
Q. Are you familiar with the Wilson-Moore lease owned by the I. T. I. O., the SE¼ of 7-19N-6, Payne County, Oklahoma?
A. Yes, sir.
Q. Are there any oil and gas wells located thereon?
A. Yes, sir.
Q. Do you know how many?
A. I think there are eight.
Q. Is there equipment being used upon that lease?
A. Yes, sir.
Q. Did you make a rendition of that equipment to the County Assessor of this county for the year 1933?
A. Yes, sir.
Q. I hand you plaintiff's exhibit "A" and ask you to state what that is?
A. That is a personal property rendition made to the County Assessor of Payne County for the taxing year 1933-34.
Q. Is that the original rendition?
A. Yes, sir.
Q. Where did you get that rendition this morning?
A. From the County Assessor's office.
Q. When was that filed with the County Assessor?
A. I believe on May 1st, 1933.

[fols. 44-53] By Mr. Prentice: We now offer plaintiff's exhibit "A" in evidence.

By Mr. Horton: Objected to as incompetent, irrelevant and immaterial.

By the Court: Overruled. Let it be admitted.

By Mr. Horton: Exception.

(Thereupon, plaintiff's exhibit "A" having been offered and admitted in evidence, the same is set out here in words, letters and figures as follows, to-wit:)

Omitted. Printed side page 15, ante.

[fol. 54] Q. Do part of your duties consist of paying the taxes, also?

A. Yes, sir.

Q. Did you make payment of the taxes levied upon the property owned by the plaintiff in Payne County for the year 1933?

A. Yes, sir.

Q. How were those taxes paid?

A. By check of the I. T. I. O.

Q. To whom was the check delivered

A. To the County Treasurer of Payne County.

Q. How?

A. By registered mail.

Q. Were they paid under protest?

[fols. 55-58] A. Yes, sir.

Q. I hand you plaintiff's exhibit "B" and ask you to state what that is?

A. This is the payment under protest on the property on the Wilson-Moore lease.

Q. Don't you mean that is the notice of protest?

A. Yes, sir, notice of payment under protest.

Q. To whom was that sent?

A. George W. Taber.

Q. Anything there to indicate it was received by Mr. Taber?

A. It has his signature.

By Mr. Prentice: We offer plaintiff's exhibit "B" in evidence.

By Mr. Horton: Objected to as incompetent, irrelevant and immaterial.

By the Court: Overruled. Let it be admitted.
By Mr. Horton: Exception.

(Thereupon, plaintiff's exhibit "B" having been offered and admitted in evidence, the same is set out here in words, letters and figures as follows, to-wit:)

Omitted. Printed side page 25, ante.

[fol. 59] Q. After the mailing of this protest to Mr. Tabor, did you receive any acknowledgement from Mr. Taber?
A. Yes, sir.
Q. Did you forward a check to Mr. Taber accompanying your protest?
A. Yes, sir.
Q. Was that check cashed?
A. Yes, sir.
Q. And after that time did you receive an acknowledgement of payment from Mr. Taber?
A. A tax receipt.
Q. I hand you plaintiff's exhibit "C" and ask you to state what that is?
A. The tax receipt from the County treasurer's office indicating that this amount of money, originally protested was paid to and received by the county treasurer.
Q. Does that say whether or not it was paid under protest?
A. Yes, sir, it indicates that it was paid under protest.

By Mr. Prentice: We offer plaintiff's exhibit "C" in evidence.

By Mr. Horton: Objected to as incompetent, and irrelevant and immaterial.

By the Court: Overruled, let it be admitted.
By Mr. Horton: Exception.

(Thereupon, plaintiff's exhibit "C" having been offered and admitted in evidence, the same is set out here in words, letters and figures as follows, to-wit:)

[fol. 60] PLAINTIFF'S EX. "C"

County Treasurer's Office, Payne County, Stillwater, Oklahoma

No. 2998

Febr. 10, 1934.

Received of Indian Territory Illuminating Oil Co. the sum of $676.72 of Eagle Township for the all payment of the following taxes for the year 1933.

Personal tax. School Dist. 103. State Equalized value. 15869 County, Twp. or Municipal tax, 143.72.
School District Tax, 533.00 Total, 676.72.

Paid Under Protest.

Original Tax Receipt 1933.
(Stamp:) Feb. 12. Recd.
George W. Taber, County Treasurer, by Katherine Shelton, Deputy.

Q. Do you know whether or not the Indian Territory Illuminating Oil Company was producing oil from the Wilson-Moore lease January 1, 1933?

A. I do.

Q. To whom was that oil delivered by the plaintiff, what refining company or oil company?

A. The Yale Oil Company, Yale.

Q. Are you familiar with the records of the plaintiff as to whom the royalty is being paid?

A. To the agency at——

[fol. 61] By Mr. Horton: Objected to as not the best evidence.

By the Court: Yes, sustained. I guess so.

Q. Do you have any statements of the company that is purchasing the oil produced from this lease?

A. Yes, sir.

Q. Will you produce them?

A. Yes, sir.

Q. Do you know to whom the royalty is being paid on the production from this lease.

A. Yes, sir.

Q. Do you know by whom it is being paid?

A. Yes, sir.

Q. By whom is that royalty being paid and to whom?

A. It is being paid by the purchasing company, which is the Yale Oil Corporation.

Q. And to whom is the royalty being paid?

A. Sent directly to the Pawnee Indian Agency at Pawnee, by the purchaser.

Q. I hand you plaintiff's exhibit "D" and ask you to state what that is?

A. It is a statement of the runs as made by the Indian Territory Illuminating Oil Company, to the Yale Oil Corporation, the amount of oil purchased and the amount of remittance.

Q. That also shows to whom the remittance was made. [fol. 62] A. Yes, sir.

By Mr. Prentice: We offer plaintiff's exhibit "D" in evidence.

By Mr. Horton: No objections.

By the Court: It may be admitted.

(Thereupon, plaintiff's exhibit "D" having been offered and admitted in evidence, the same is set out here in words, *letters and figures* as follows, to-wit:)

PLAINTIFF'S EXHIBIT D

Please examine immediately as it will be impossible to correct errors after 30 days.

Yale, Okla. 1-31-34.

Yale Oil Corporation

State of Account of Indian Terr. Ill. Oil Co., Bartlesville, Oklahoma

Oil Runs Wilson-Moore-7-19-6 farm. Month of Jany-1934

Barrels of oil

Date Tank No. Credit Debit.

Oil Rec'd from your lease—Month of Jany-1934.

Date	Ticket	Bls.	Gv.	Price	Amount
1- 1-34	3	81.68	37.7		
1- 5-34	8	71.56	37.5		
1-11-34	19	81.44	37.5		
11-16-34	24	73.64	37.7		
1-22-34	32	79.10	37.8		
1-25-34	38	76.24	37.7		
		463.66		1.02	$472.93

Ded. Acct. overpayment ticket #457 11-13-33

Your letter 12-30-33..... 1.64

$471.29

[fol. 63]

PLAINTIFF'S EXHIBIT D—Continued

1/8th royalty	57.95	58.91
7/8ths W. I.	405.71	412.38
Lese excise tax HB	#483–1/8th of 1 c per bbl.	.51
	463.66	411.87
Ch to Indian Terr. Ill. Oil Co. Bartlesville Ok		411.87
Ck to Pawnee Indian Agency—Pawnee—Okla		58.91

No gross production tax due-acct Restricted Indian Land.
CRR/C
5c.
HH.

Q. You have examined the records of the plaintiff for the month of December 1932 and January 1933 to find the royalty being paid from this lease.

A. Yes, sir.

Q. And was the royalty being paid in the same manner as shown by this statement, at that time?

A. Yes, sir.

Cross examination.

By Mr. Horton:

Q. You say that at the time the assessment was made this year this lease was being operated, oil produced from it?

A. Yes, sir.

Q. How long has it been since you have been on the lease?

A. I have never been on the lease to my knowledge.

Q. Then your knowledge about that fact is merely what someone has told you, or what you have learned from other sources.

[fol. 64] A. Yes, sir, it is based on our records in the office.

Q. Then you are not familiar with the equipment upon the lease.

A. Not directly.

By the Court:

Q. What you know is what your records show is out there.

A. Yes, sir.

Q. You don't know whether it is our there or not.

A. No, sir.

By Mr. Horton: I move the court to strike this witness's testimony concerning the fact that this lease is being oper-

ated and oil being produced upon it at the time the property herein was assessed and became subject to assessment.

By Mr. Prentice: I object to the motion being sustained for the reason that the record shows what the evidence is. It may be secondary in a way, but the tax returns are prepared from the records.

By the Court: Well, of course, this witness's admissions on cross examination show that he doesn't know the ultimate facts in the case, but just simply from the records—whatever it is worth—but I will not strike it. Overruled.

By Mr. Horton: Exception.

(Witness is excused.)

[fol. 65] By Mr. Prentice: Comes now the plaintiff and offers in evidence, plaintiff's exhibits "E", "F" and "G", being the photostatic copies of the original departmental oil and gas mining lease executed Belt Short Bear and others, and "F" being the assignment of said lease covered by exhibit "E" by the Westerly Oil Company to the Indian Territory Illuminating Oil Company, and "G" being the stipulation modifying the terms of the oil and gas mining lease executed by the parties and approved by the Secretary of the Interior.

By Mr. Horton: No objections.

By the Court: They may be admitted.

(Thereupon, plaintiff's exhibit "E" having been offered and admitted in evidence, the same is set out here in words, letters and figures as follows, to-wit:)

[fol. 66] PLAINTIFF'S EX. "E"

Quadruplicate. Form 5–154h. Lease No. 76

(Stamp:) Office of Indian Affairs. Received Oct. 13, 1914. 11031.

(Stamp:) Office of Indian Affairs. Received June 13, 1919. 51353.

Oil and Gas Mining Lease—Allotted Indian Lands

Pawnee Reservation, Oklahoma

This indenture of lease, made and entered into in quadruplicate on this 3rd day of February, A. D. 1913, by and

between Belt Short Bear, Will Justice and Geo. W. Nellis, Supt. for Colonel Moore a minor aged 11 years, heirs of Wilson Moore, deceased of Pawnee, State of Oklahoma, allottee No. 263 of the Pawnee tribe of Indians, party of the first part, hereinafter designated as lessor, and Westerly Oil Company of Bartlesville, State of Oklahoma, party of the second part hereinafter called the lessee, under and in pursuance of the provisions of the act of Congress approved March 3, 1909 (35 Stat. L. 781-783), and the regulations approved by the Secretary of the Interior, September 3, 1912;

Witnesseth:

1. The lessor, for and in consideration of one dollar, the receipt whereof is acknowledged, and of the royalties, covenants, stipulations and conditions hereinafter contained, and hereby agreed to be paid, observed, and performed by the lessee, do hereby demise, grant, lease and let unto the lessee for the term of ten years from the date of the approval hereof by the Secretary of the Interior, and as much longer thereafter as oil and gas shall be found in paying quantities, all the oil deposits and natural gas in and under [fol. 67] the following described tract of land, lying and being within the county of Payne, State of Oklahoma, to-wit: The SE/4 of section 7, township 19 N, range 6 E of the Indian Meridian, and containing 160 acres, more or less, with the exclusive right to prospect for, extract, pipe, store and remove oil and natural gas, and to occupy and use so much only of the surface of said land as may reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing and removing such oil and natural gas, also the right to obtain from wells or other sources on said land, by means of pipe lines or otherwise, a sufficient supply of water to carry on said operation, and also the right to use, free of cost, oil and natural gas as fuel so far as necessary to the development and operation of said property.

2. The leasee hereby agrees to pay or cause to be paid to the Superintendent of Indian School or other officer of the United States having jurisdiction over the leased premises, hereinafter called the officer in charge, for the use and benefit of the lessor, as royalty, the sum of 12½ per cent of the gross proceeds of all crude oil extracted from the said land, such payment to be made at the time of sale or

removal of the oil. And the lessee shall pay as royalty on each gas-producing well three hundred dollars per annum in advance, to be calculated from the date of commencement of utilization; provided, that in the case of gas wells of small volume, when the rock pressure is one hundred pounds or less, the parties hereto may, subject [fol. 68] to the approval of the Secretary of the Interior, agree upon a royalty which will become effective as a part of this lease; provided, further, that in case of gas wells of small volume or where the wells produce both oil and gas or oil and gas and salt water to such an extent that the gas is unfit for ordinary domestic purposes, or where the gas from any well is desired for temporary use in connection with drilling and pumping operations on adjacent or nearby tracts, the lessee shall have the option of paying royalties upon such gas wells of the same percentage of the gross proceeds from the sale of gas from such wells as is paid under this lease for royalty on oil. The lessor shall have the free use of gas for domestic purposes in his residence on the leased premises, provided there be surplus gas produced on said premises over and above enough to fully operate the same. Failure on the part of the lessee to use a gas producing well which cannot profitably be utilized at the rate herein prescribed, shall not work a forfeiture of this lease so far as the same relates to mining oil, but if the lessee desire to retain gas producing privileges, the lessee shall pay a rental of one hundred dollars per annum, in advance, calculated from date of discovery of gas, on each gas producing well the gas from which is not marketed and not utilized otherwise than for operations under this lease. Payments of annual gas royalties shall be made within twenty five days from the date such royalties become due, other royalty payments to be made monthly on or before the 25th day of the month succeeding that for [fol. 69] which such payment is to be made, supported by sworn statements.

3. Until a producing well is completed on said premises the lessee shall pay, or cause to be paid, to the officer in charge, for the use and benefit of the lessor, as advanced royalty, from the date of the approval of this lease, fifteen cents per acre per annum, in advance, for the first and second years; thirty cents per acre per annum, in advance, for the third and fourth years; seventy five cents per acre

in advance, for the fifty year, and one dollar per acre per annum, in advance, for each succeeding year of the term of this lease; it being understood and agreed that such sums of money so paid shall be a credit on stipulated royalties for the year for which the payment of advanced royalty is made, and the lessee hereby agree that said advance royalty when paid shall not be refunded to the lessee because of any subsequent surrender or cancellation thereof; nor shall the lessee be relieved from its obligation to pay said advance royalty annually when it becomes due, by reason of any subsequent surrender or cancellation of this lease.

4. The lessee shall exercise diligence in sinking wells for oil and natural gas on the land covered by this lease, and shall drill at least one well thereon within one year from the date of approval of this lease by the Secretary of the Interior, or shall pay to the officer in charge, for the use and benefit of the lessor, for each whole year the completion of such well is delayed, after the date of such approval by the Secretary of the Interior, but not to exceed [fol. 70] ten years from the date of such approval, in addition to the other considerations named herein, a rental of one dollar per acre, payable annually; and if the lessee shall fail to drill at least one well within any such yearly period and shall fail to surrender this lease by executing and recording a proper release thereof and otherwise complying with paragraph numbered 7 hereof on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken and held as conclusively evidencing the election and covenant of the lessee to pay the rental of one dollar per acre for such year, and thereupon the lessee shall be absolutely obligated to pay such rental. The failure of the lessee to pay such rental before the expiration of fifteen days after it becomes due at the end of any yearly period during which a well has not been completed as provided herein, shall be a violation of one of the material and substantial terms and conditions of this lease, and be cause for cancellation of such lease under paragraph numbered 9 hereof; but such cancellation shall not in anywse *to* operate to release or relieve the lessee from the covenant and obligation to pay

such rental, or any other accrued obligation. The lessee may be required by the Secretary of the Interior, or by such officer as may be designated by him for the purpose, to drill ~~and~~ operate wells to offset wells on adjoining tracts, and within three hundred feet of the dividing line, or in case of gas wells, lessee may have the option, in lieu of drilling offset wells, of paying a sum equal to the royalties [fol. 71] which would accrue on each well to be offset if said wells had been drilled and were being operated on the land described herein and in accordance with the terms hereof. It is understood and agreed by the parties hereto that offset wells shall be drilled, or royalty paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirements shall constitute a violation of one of the substantial terms of this lease.

5. The lessee shall carry on development and operations in a workmanlike manner, commit no waste on the said land and suffer none to be committed upon the portion in its occupancy or use, take good care of the same and promptly surrender and return the premises upon the termination of this lease to the lessor or to whomsoever shall be lawfully entitled thereto, unavoidable casualties excepted; the lessee shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lessee, but said buildings and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting the tools, derricks, boilers, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells, which shall remain the property of the lessee and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; shall not permit any nuisance to be maintained on [fol. 72] the premises under lessee control, nor allow any intoxicating liquors to be sold or given away for any purposes on such premises; shall not use such premises for any other purpose than those authorized in the lease; and before abandoning any well shall securely plug the same so as effectually to shut off all water from the oil bearing stratum, or in the manner required by the laws of the State in which the lands are situated.

6. The lessee shall keep an accurate account of all oil mining operations, showing the sales, prices, dates purchasers, and the whole amount of oil mined or removed; and all sums due as royalty shall be a lien on all improvements, tools, movable machinery and all other personal chattels used in operating said property, and upon all of the unsold oil obtained from the land herein leased, as security for payment of said royalty.

The lessee shall submit quarterly reports, whether oil royalty is paid by the pipe line company or other purchaser, to the officer in charge within fifteen days after March 31, June 30, September 30 and December 31 of each year upon prescribed forms, showing manner of operation, total production during the quarter, and all receipts during the quarter from any operations under the lease for the benefit of the lessor or the lessee, or both, giving the amount of each payment, the name of the party making same, and the nature of the operations from which the money covered by such payment was d-rived.

7. The lessee may at any time, by paying to the officer in charge all amounts then due as provided herein, and [fol. 73] the further sum of one dollar, surrender and cancel this lease and be relieved from all further obligations or liability thereunder; provided, that if this lease has been recorded, lessee shall execute a release and record the same in the proper county recording office; provided further, that in the event the trust period expires or the lessor be granted a patent in fee, the lessee may surrender all the undeveloped portion of the leased premises, by paying the officer in charge all amounts then due and the further sum of one dollar, which surrender shall not affect the terms hereof as to each producing well and ten acres of said premises as nearly in square form as possible next contiguous to and surrounding each of said wells, and execute and record a cancellation of premises surrendered.

8. This lease shall be subject to the regulations prescribed by the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease; provided, that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates of royalty or payment thereunder, or the assign-

ment of leases, shall operate to affect the terms and conditions of this lease.

9. Upon the violation of any of the substantial terms and conditions of this lease, the Secretary of the Interior (or the lessor, in event restrictions are removed as provided in paragraph 12 hereof) shall have the right at any time after thirty days' notice to the lessee specifying the terms and conditions violated, to declare this lease null and [fol. 74] void and the lessor shall then be entitled and authorized to take immediate possession of the land.

10. Before this lease shall be in force and effect the lessee shall furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, conditioned for the performance of this lease, which bond shall be deposited and remain on file in the Indian Office.

11. Assignment of this lease or any interest therein may be made with the approval of the Secretary of the Interior, it being understood that to secure such approval the proposed assignee need only be qualified to hold such a lease under the rules and regulations, and furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, and such further bond or bonds as may be required by said Secretary, conditioned for the faithful performance of the covenants and conditions of this lease.

12. In event restrictions on alienation shall be removed from all the leasehold premises described above, by the trust period expiring and the lessor being given a patent in fee to the lands, or by the lessor being granted a patent in fee prior to the termination of his trust patent, this lease shall be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to the officer in charge shall thereafter be made to lessor of the then [fol. 75] owner of said lands in person, or be deposited to the credit of said lessor or his assigns at such place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease.

13. Each and every clause and covenant in this indenture shall extend to the heirs, executors, administrators, successors and lawful assigns of the parties hereto.

14. In witness whereof, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned.

Will Justice. (Seal.) Belt Short Bear. (Seal.)
Geo. W. Nellis, Supt. for Colonel Moore.

Two witnesses to execution by lessor: Victor E. Norton, P. O. Pawnee, Okla. Carrie E. Ross, P. O. Pawnee, Okla.

Westerly Oil Company, by H. V. Foster, President. (Seal.)

Attest: M. P. Stilwell, Secretary.

Two witnesses to execution by lessee: Chas. Foheich, Bartlesville, Okla. C. W. Anderson, Bartlesville, Okla.

STATE OF OKLAHOMA,
Washington, ss:

Before me, Thos. F. Gorman, a notary public in and for the said county and state, on this 8th day of April, 1913, personally appeared H. V. Foster to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President and [fol. 76] acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

Thos. F. Gorman, Notary Public. My commission expires January 26th, 1916. (Seal.)

STATE OF OKLAHOMA,
County of Pawnee, ss:

Electa S. Nellis, before me, notary public in and for said county and state, on this 3rd day of February, 1913 personally appeared Will Justice, Belt Short Bear and Geo. W. Nellis for Colonel Moore, a minor, heirs of Wilson Moore, deceased to me known to be the identical person who executed the within and foregoing lease, and acknowledged to

me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Electa S. Nellis, Notary Public. My commission expires March 1, 1916. (Seal.)

Department of the Interior,

United States Indian Service

Pawnee Training School or Agency, Pawnee, State of Oklahoma, 1913

The within lease is forwarded to the Commissioner of Indian Affairs with recommendation that it be approved. (See my report of even date.)

Geo. W. Nellis, Superintendent of the Pawnee School or Agency.

[fol. 77] Department of the Interior

Office of Indian Affairs

The within lease is respectfully submitted to the Secretary of the Interior with recommendation that it be approved on condition that its term shall not extend beyond the minority of Colonel Moore, the minor heir.

E. B. Merett, Assistant Commissioner of Indian Affairs.

Department of the Interior, Oct. 23, 1914.

Approved as recommended: B. O. Sweeney, Assistant Secretary.

The conditional approval of the within lease, to expire on December 31, 1922, the date on which Colonel Moore will reach his majority, is hereby accepted.

Westerly Oil Company, by H. V. Foster, Pres.
United States Fidelity & Guaranty Co., by W. E. Phillips, Attorney in Fact. (Seal.)

On the back: State of Oklahoma, County of Payne, ss. This instrument was filed for record on the 10 day of Apr. A. D. 1917 at 1:35 P. M. and duly recorded in book 9 of L. R. page 172. W. T. Keys, County Clerk, by M. L. Edwards, deputy. (Seal.)

(And plaintiff's exhibit "F" having been offered and admitted in evidence, the same is set out here in words, letters and figures as follows, to-wit:)

[fol. 78] PLAINTIFF'S EX. "F"

Payne #4341.

(Stamp:) Department of Interior. Received Oct. 20, 1930. 55124

I-69-ind-158. 5-154c

(Must be executed in quadruplicate.)

Assignment of Oil and Gas Lease

Whereas the Secretary of the Interior has heretofore approved oil and gas mining lease, dated February 3, 1913, entered into by and between Westerly Oil Company, lessee and Belt Short Bear, Will Justice, and Geo. W. Nellis, Supt. for Colonel Moore, a minor, aged 11 years, heirs of Wilson Moore, deceased, Allottee #263, lessor, covering the following described land in the Pawnee Reservation, State of Oklahoma southeast quarter (SE¼) of section 7, township 19 north, range 6 east.

Now, therefore, for and in consideration of one and no/100 ($1.00) dollars, the receipt of which is hereby acknowledged, the said Westerly Oil Company, the lessee in the above described lease, hereby bargains, sells, transfers, assigns, and conveys all the right, title and interest of the lessee in and to said lease, subject to the approval of the Secretary of the Interior to Indian Territory Illuminating Oil Company.

In Witness whereof the said lessee has hereunto set its hand and seal this 1st day of October, 1930.

Westerly Oil Company, by L. W. Gordon, its Vice President. (Seal.)

Attest: W. W. Varvel, Asst. Secretary.

(Stamp:) Approved. Originating dept. MED. Legal dept. Subs'nce. Execut'n AB.

[fol. 79] STATE OF OKLAHOMA,
County of Washington, ss:

On this 1st day of October, A. D. 1930, before me, a notary public within and for the State and county afore-

said, personally appeared R. L. Gordon and W. W. Varvel, to me personaly known, who, being by me duly sworn. did each say that R. L. Gordon is the vice-president and W. W. Varvel is the assistant secretary of Westerly Oil Company, a corporation, and that the seal affixed to the foregoing and annexed instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and said R. L. Gordon and W. W. Varvel duly acknowledged that they each had in their said official capacities executed the foregoing instrument as the act and deed of the said company for the consideration and purposes therein mentioned and set forth; and I do hereby so certify.

Witness my hand and seal on this 1st day of October, 1930.

M. B. Douglass, Notary Public. My commission expires Nov. 28, 1931. (Seal.)

Acceptance by Assignee

The assignee in the above and foregoing instrument made subject to the approval of the Secretary of the Interior hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said-described indenture of lease, when assigned, and the rules [fol. 80] and regulations of the Secretary of the Interior, so far as applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof the said assignee has hereunto set its land and seal this 1st day of October, 1930.

Indian Territory Illuminating Oil Company, by R. L. Gordon, its Vice President. (Seal.)

Attest: W. W. Varvel, its Asst. Secretary.

Department of the Interior, Washington, D. C. Nov. 3, 1930.

Approved: Jas M. Dixon, First Assistant Secretary of the Interior.

Endorsed on the Back: Westerly Oil Co. to Indian Territory Illuminating Oil Company. State of Oklahoma,

County of Payne, ss. This instrument was filed for record on the 25 day of Nov. A. D. 1930 at 2:10 o'clock P. M. and duly recorded in 22 A. R. page 576. V. A. Doty, County Clerk, by Velma Ricker, Deputy. (Seal.)

(Thereupon, plaintiff's exhibit "G" having been offered and admitted in evidence, the same is set out here in words, letters and figures as follows, to-wit:)

[fol. 81] PLAINTIFF'S EXHIBIT G

5-154i.

Stipulation Modifying Terms of Oil and Gas Mining Lease

(To be executed in quadruplicate.)

Belt Short Bear, Will Justice and Supt. Thomas Ferris, for Colonel Moore, a minor, heirs of Wilson Moore, deceased Pawnee Allottee No. —.

Whereas, 263, of Pawnee, Oklahoma, as lessor and Westerly Oil Company of Bartlesville, Oklahoma, as lessee, entered into an oil and gas mining lease dated February 3, 1913, covering the following described land allotted to Wilson Moore, deceased and situate in Payne County, State of Oklahoma to-wit: SE/4 of Sec. 7 Twp. 19 North, range 6 East, containing 160 acres. That the terms of said lease are hereby modified with reference to the expiration thereof, as follows: "That the within lease is made subject to the condition that it will extend to the majority of the minor lessor, Colonel Moore, who will reach his majority on Dec. 11, 1922, and as much longer thereafter as oil or gas may be found in paying quantities on said premises.

Whereas, the present owner of said lease and the owner of said described land desire to amend, change, and modify certain terms of said contract;

Now, therefore, in consideration of the sum of one ($1,00) dollar, the receipt whereof is hereby acknowledged by the lessors, and other and further valuable considerations, said lease is hereby modified so as to in all respects [fol. 82] conform to the terms and conditions of the lease

form authorized and adopted in pursuance of the revised regulations approved by the Secretary of the Interior on September 3, 1912, a copy of which lease form, marked exhibit "A", is attached hereto and made a part hereof, and all terms and conditions of said original lease contract in conflict therewith are hereby abrogated and held for naught; provided, however, that nothing herein contained shall be construed to change the date of said above-described lease or the date from which rents and royalties thereunder shall be computed and be payable.

In witness whereof, the parties hereto have affixed their signatures this 5th day of May, 1919.

Belt Short Bear. Will Justice. Thomas Ferris, Supt. Thomas Ferris, for Colonel Moore, Minor lessor.

Two witnesses to execution by lessor: A. T. Seevers, P. O. Pawnee, Oklahoma. J. B. Davis, P. O. Pawnee, Oklahoma.

Westerly Oil Company, H. O. Foster, President.

Attest: C. H. Caldwell, Secretary.

Two witnesses to execution by lessee: Thos F. Gorman, P. O. Bartlesville, Okla., H. C. McChisney, P. O. Bartlesville, Okla.

Acknowledgement of Lessor

STATE OF OKLAHOMA,
County of Pawnee, ss:

Before me, a notary public, in and for said County and State on this 5th day of May, 1919, personally appeared Belt Short Bear, Will Justice and Supt. Thomas Ferris for Colonel Moore, minor, heirs of Wilson Moore, deceased, to [fol. 83] me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Ruth Sayre, Notary Public. My commission expires October 1, 1922.

Acknowledgment of Corporation (Lessee)

STATE OF OKLAHOMA,
County of Washington, ss:

Before me, a notary public, in and for said County and State, on this 13th day of May, 1919, personally appeared H. V. Foster, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its president, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

T. C. Williams. My commission expires 12-30-1920.

Consent of Surety

The United States Fidelity & Guaranty Company of Baltimore, Maryland, surety for The Westerly Oil Company on the bond covering the lease above described, hereby consents to the above modifications of the terms of the said lease and agre-s that said bond shall secure any and all additional obligations assumed by the lease owner herein. [fol. 84] Dated at Bartlesville, Okla. 13th day of May, 1919.

United States Fidelity and Guaranty Company,
W. Holm, Attorney in Fact.

Department of the Interior, Washington, D. C. Jul. 26, 1919.

Approved: S. C. Hopkins, Assistant Secretary.

JOE HERRING, is thereupon called as a witness on behalf of the plaintiff and having been duly sworn to tell the truth, the whole truth and nothing but the truth, testifies as follows, to-wit:

Direct examination.

By Mr. Prentice:

Q. State your name?
A. Joe Herring.
Q. Where do you live?

A. Yale.

Q. What is your business?

A. In charge of the property of the I. T. I. O. company in the Yale district.

Q. Are you in charge of the so-called Wilson Moore lease?

A. Yes, sir.

[fol. 85] Q. That covers the southeast quarter of 7-19-6, Payne County, Oklahoma.

A. Yes, sir.

Q. Do you live on the lease?

A. Yes, sir.

Q. You are out there every day.

A. Yes, sir.

Q. How long have you lived on that lease?

A. Three or four years.

Q. Were you in charge of the lease and living there on January 1st, 1931?

A. Yes, sir.

Q. And also on January 1st, 1933?

A. Yes, sir.

Q. Are you familiar with the equipment and improvements placed on that lease by the plaintiff?

A. Yes, sir.

Q. Are you familiar with the use of them?

A. Yes, sir.

Q. I hand you plaintiff's exhibit "A" being the tax rendition of the plaintiff for the year 1933, and ask you to examine appendix A, with reference to the property itemized, and can you tell the court whether or not that property is located upon the Wilson Moore lease, and was January 1, 1933?

A. Yes, sir, it was.

Q. Was all that property used in the production of oil and/or gas from the lease upon that date?

[fol. 86] A. Yes, sir.

Q. Was the same property located on that lease on January 1st 1931?

A. Yes, sir.

Q. Was it used for the same purpose on January 1, 1931 as it was on January 1st, 1933?

A. Yes, sir.

Q. Since January 1st, 1931, is it true or not, that well No. 6 was abandoned before January 1, 1933?

A. No, sir. No. 6 had a fishing job and the well shut down, but not abandoned.

Q. Is all of this property necessary for the use of the company to produce oil and gas from this lease?

A. Yes, sir.

Cross-examination.

By Mr. Horton:

Q. Is well No. 6 being operated now?

A. Yes, sir.

Q. Was it on January 1st, 1933?

A. No, sir.

Q. Has it been operated during 1933?

A. No, sir.

By Mr. Prentice:

Q. I meant to refer to Well No. 8?

A. Yes, sir.

Q. That was abandoned prior to January 1, 1933.

A. Yes, sir.

[fol. 87] By Mr. Horton:

Q. How often do you go on the lease?

A. Every day.

Q. And it is a fact that oil has been produced on this lease and this equipment used at all times during the year 1933.

A. Yes, sir.

Q. And on January 1, 1933.

A. Yes, sir.

Q. You stated that all of this is necessary for the production of oil upon the lease.

A. Yes, sir.

Q. Have you examined this list lately to see what property is on there?

A. I think I have.

Q. On the first item, portable dwelling, is there such a dwelling on the lease?

A. Yes, sir.

Q. In what way is that necessary for the production of oil and gas from these premises?

A. The pumper has to have a place to live.

Q. And you do that?

A. Yes, sir.

Q. Well, you live in Yale.

A. No, sir, I live out there, too.

Q. Do you live on the lease?

A. Yes, sir.

Q. In a house on the lease?

A. Yes, sir.

[fol. 88] Q. Is that claimed to be exempt, also, the house you live in?

A. I don't know whether it is or not.

By the Court:

Q. How far is this lease from Yale?

A. One mile.

Q. East?

A. North.

By Mr. Horton:

Q. Then your contention is that the reason the dwelling house is necessary is because the pumper has to have a place to live.

A. Yes, sir.

Q. Do you work in 12 hour shifts?

A. No, sir, he is pumper, he starts his work up and pumps them all. And I got the responsibility all the time.

Q. Do his duties require him to be on the least 24 hours a day?

A. Not necessarily 24 hours, but it is that way sometimes.

Q. You have one garage listed here which you say is also necessary in the production of oil. In what respect would that be necessary.

A. This man has to have a car and he has to have a garage to put it in.

Q. And this garage is located on the lease.

A. Yes, sir.

Q. And you feel that that is necessary for the same reason you feel the house is necessary.

A. Yes, sir.

By the Court:

Q. Is the car owned by the company?
A. No, sir.

[fol. 89] By Mr. Horton:

Q. He don't need a car on the premises so far as going about the lease attending to his duties.
A. Yes, sir.
Q. How large is the lease?
A. A quarter section.
Q. You think it is necessary for him to drive between these wells?
A. Occasionally it is.
Q. Why is that?
A. Well, he may want to take something up to a well, say a hundred feet of 2 inch pipe, he couldn't carry it.
Q. Is this a car or truck.
A. It is a car.

By the Court:

Q. The car is his car.
A. Yes, sir.

By Mr. Horton:

Q. The tool house is the next item listed. Explain the necessity for the tool house.
A. Well, you have got to have some place for tools.
Q. That is where the tools are kept?
A. Yes, sir.
Q. The next item, engines——

By the Court:

Q. Do you use the tool house for keeping tools on any other lease than this Indian lease?
A. No, not necessarily, only if there happens to be tools in this house we would need on another lease, we would use them.
Q. It isn't a jointly operated took house, if anything is used it is incidental.

[fol. 90] By Mr. Horton:

Q. The next item you have is 7 gas engines, what use are those engines put to?

A. Yes, sir.

Q. And those stock tanks are located upon the leasehold.

A. Yes, sir.

[fol. 93] Q. And the Indian's share hadn't been run out of this 76 barrels.

A. No, sir.

Q. They would wait until they had a tank full and then it would be run to the purchasing company.

A. Yes, sir.

Q. Was all of this equipment used for the same purpose on January 1, 1931.

A. Yes, sir.

"That's all."

(Witness is excused.)

By Mr. Prentice: Comes now the plaintiff and offers in evidence exhibits "H" and "I", being the complete pleadings and judgment rendered in case No. 10,794 in the District Court of Payne County, Oklahoma, in the matter of the assessment of personal property of the Indian Territory Illuminating Oil Company, for the year 1931, the judgment therein being rendered on February 24, 1933.

By Mr. Horton: To which the defendant objects as incompetent, irrelevant and immaterial, and having no connection with this case.

By the Court: This is a new taxing period and conditions might have materially changed from what they were then. Objection sustained.

By Mr. Prentice: Exception.

[fol. 94] Thereupon, plaintiff's exhibit "H" having been offered in evidence by the plaintiff, and rejected by the court, the same is set out here in words, letters and figures as follows, to-wit:)

PLAINTIFF'S EXHIBIT "H"

IN THE DISTRICT COURT OF PAYNE COUNTY, STATE OF OKLAHOMA

No. 10,794

In the Matter of the Assessment of Personal Property of the Indian Territory Illuminating Oil Company, a Corporation, for the Year 1931

Filed, State of Okla., County of Payne, Nov. 19, 1931, Dewey Dobson, Court Clerk, by D. R., deputy.

BEFORE THE COUNTY BOARD OF EQUALIZATION OF PAYNE COUNTY, OKLAHOMA

In the Matter of the Assessment of Personal Property of the Indian Territory Illuminating Oil Company, a Corporation, for the Year 1931.

Case Made for Appeal

Before the Excise Board of Payne County

Present:

C. A. Melton, Chairman. J. M. Grubbs, Member. W. W. Myatt, Member.

Appearances:

Ernest F. Jenkins, County Attorney, Stillwater, Oklahoma.

C. E. Wilhite, Attorney for Indian Territory Illuminating Oil Company.

[fol. 95] Be it remembered, that on the 18th day of November, 1931, comes the Indian Territory Illuminating Oil Company, and files its complaint, which complaint is set out here in words, letters and figures as follows, to-wit:

BEFORE THE COUNTY BOARD OF EQUALIZATION OF PAYNE COUNTY, OKLAHOMA

In the Matter of the Assessment of Personal Property of the Indian Territory Illuminating Oil Company, a Corporation, for the Year 1931.

Complaint

To the Honorable County Board of Equalization of Payne County, Oklahoma:

Comes now the Indian Territory Illuminating Oil Company, a corporation, and for complaint against the action of the county asesssor of said county, states:

That heretofore, the complainant rendered all of its personal property in said county for taxation and in a separate rendition rendered certain property in said county belonging to the complainant which it claimed is not taxable, which list of non-taxable property is hereby referred to and made a part hereof as if embodied in this complaint. That among the items of personal property claimed exempt are:

72,207 bbls. of oil produced from lands of Restricted Indians of the Five Civilized Tribes, stored in tanks on the E½ of the NE¼ of section 35, Township 19 north, range 6 east, gravity thirty-seven degrees from one to five years old at 59@ or $42,602.13, other items as shown in said list of non-taxable property amount to $20,537.56.

[fol. 96] That prior to June 22, 1931, the complainant herein was notified by the assessor of said county that said property had been assessed for taxation and that in pursuance to said notice the complainant herein prepared a complaint to file before the County Board of Equalization of said county to the effect that the complainant was aggrieved at the assessment so made and asking the County Board of Equalization to correct the assessment and to strike from the rolls the assessment so made by the county assessor, and said complainant by its duly authorized representative, appeared before the County Board of Equalization of said county on June 22, 1931, and upon the undetstanding and statements then made, the complainant did not file said complaint because the said County Board of Equalization eliminated from the tax roll the item of $20,537.56 a copy of said

order is attached hereto, marked exhibit "A" and made a part of this complaint.

The complaint further states that thereafter the county assessor made an abstract of the assessment of said county and submitted the same to the State Board of Equalization for its action, and that prior to the 6th day of November, 1931 the State Board of Equalization had certified and returned said abstract and equalization to the proper officer of Payne County, Oklahoma. That on said date, Messrs. C. A. Melton, J. M. Grubbs, and W. W. Myatt held a purported meeting as the Board of Equalization of Payne County, and then and there, as the complainant believes and is informed, without authority of law rescinded the [fol. 97] action of the Board of Equalization lawfully made striking said property from the tax roll on June 22, 1931, and that in obedience to said purported order, the assessor of Payne County has placed said property represented by valuation of $20,537.56 on the tax roll of Payne County, Oklahoma.

And now on this date, the said County Board of Equalization of Payne County claiming to still be in session, the complainant herein files this complaint against the action of the assessor and thereupon states:

1. That the purported County Board of Equalization now in session and in session on November 6, 1931, had no right or authority of law to rescind the order striking said property from the tax rolls made on June 22, 1931.

2. That the County Assessor of Payne County had no lawful right or authority to place said property represented by the items complained of as not being taxable on the tax roll after he had completed the assessment roll and forwarded an abstract thereof to the State Board of Equalization.

3. That the County Board of Equalization had no right to assemble and could make no valid order on November 6, 1931. Their only power to act would be in the capacity of an excise board.

4. That the property rendered to the assessor under protest, which the complainant claimed and now claims exempt, was not and is not subject to ad valorem taxes as of Janu-

ary 1, 1931, for the reason that said property is now, was then, and has at all times heretofore been oil well drilling [fol. 98] apparatus, supplies and equipment necessarily used in and around wells producing oil and gas from land belonging to a Restricted Indian and that said property was indispensable for said use. That said property is located on the southeast quarter (SE¼) of section 7, township 19 north, range 6 east, known as Wilson Moore farm, and that the Indian owner of said land is not subject to taxation and that the property owned and held by him as a ward of the Government is not subject to taxation and that the Indian Territory Illuminating Oil Company has developed the land of said restricted Indian by permission and under supervision of the United States Government by and through the Secretary of the Interior and is now operating same in such capacity and as such, developed and is operating said lease as a governmental agency or instrumentality.

5. Complainant further states that the stored oil above referred to and shown in the list of exempt property and claimed exempt by this complainant, is oil produced from Restricted Indian land of the Five Civilized tribes, and that the complainant herein produced same from Restricted Land in the capacity of an instrumentality of the United States Government, and for the reasons herein assigned said property is not taxable, and should by the county board of equalization of Payne County, be stricken from the rolls.

Wherefore, complainant prays that the Equalization Board of Payne County reverse the order and action of the County Assessor of said county in placing said property on the tax roll and that all of said property be stricken from [fol. 99] the tax rolls of Payne County, and that the complainant be granted such other relief in the premises as the Board deems just.

Indian Territory Illuminating Oil Company, by C. E. Wilhite, its Attorney.

Indorsed on Back: Before the County Board of Equalization of Payne County, Oklahoma. In the matter of the assessment of personal property of the I. T. I. O. a corp. for the year 1931. Complaint, Filed Nov. 18, 1931. C. E. Wilhite, Attorney, Drawer L. Bartlesville, Okla.

And thereafter, and on the same day and date, to-wit, the 18th day of November, 1931, this cause comes on for hearing before the Board of Equalization of Payne County. The State of Oklahoma is present by Ernest F. Jenkins, County Attorney, and the complainant is present by C. E. Wilhite, its attorney, and the following record is made, to-wit:

BEFORE THE EQUALIZATION BOARD OF PAYNE COUNTY, OKLAHOMA

In the Matter of the Protest of the Indian Territory Illuminating Oil Company for Assessment of Personal Property in Payne County for the Year 1931-32.

By Mr. Wilhite: Comes now Indian Territory Illuminating Oil Company, a corporation, hereinafter called "complainant", by its attorney of record, C. E. Wilhite, and Payne County, Oklahoma, a political corporation, by its county attorney, Ernest F. Jenkins, and both sides reserving the right to except to the rulings and decisions of the [fol. 100] Board of Equalization, and the right to appeal therefrom, stipulate and agree that the following statement contains and shall constitute the facts in the above entitled matter, and that said Board may enter judgment thereon accordingly, the same as if such facts hereinafter recited had appeared from the evidence and testimony adduced in open hearing before said Board of witnesses duly summoned to appear and testify, it being further stipulated that the appearance of such witnesses and the introduction of such testimony orally, is hereby waived:

1. That the Equalization Board of Payne County, Oklahoma is in session on this 18th day of November, 1931, and that such board is duly authorized and empowered to hear this proceeding.

2. That complainant is a corporation duly organized and incorporated under the laws of the State of New Jersey and that it has a permit to do and transact business in the State of Oklahoma; that it maintains its principal office in Bartlesville, Washington County, Oklahoma, and that it is engaged in the production and discovery of oil.

JOE HERRING is thereupon called as a witness on behalf of the Complainant, and, after being first duly sworn to tell the truth, the whole truth and nothing but the truth, testifies as follows, to-wit:

Direct examination.

By Mr. Wilhite:

Q. State your name?
A. Joe Herring.
[fol. 101] Q. You live at Yale?
A. Yes, sir.
Q. You are now employed with the Indian Territory Illuminating Oil Company?
A. Yes, sir.
Q. What is your connection with the company?
A. District Superintendent.
Q. As such District Superintendent, what are your duties?
A. To see that things are running, to have charge of the operation in the district.
Q. Are you acquainted with the Wilson-Moore lease?
A. I am.
Q. Do you know where it is located?
A. Yes, sir.
Q. How many wells are on that lease?
A. Nine.
Q. I hand you an instrument which purports to be the original return, or assessment list filed by the Indian Territory Illuminating Oil Company, with the County Assessor. Calling your attention to page 2 of that return and property shown to be located in School District 103, Eagle Township, and being on the Wilson-Moore farm, I will ask you Mr Herring, if that property listed is all on that farm?
A. Just about, there is three derricks that isn't there.
Q. How many is there?
A. Five, there are nine listed.
Q. There was nine, wasn't there, Mr. Herring?
[fol. 102] A. No, we lost them.
Q. When did you lose those three?
A. In September, 1930.
Q. That was when that cyclone struck?

A. Yes, sir.

Q. As a matter of fact there was only six derricks standing on that farm the first of January this year?

A. Yes, sir.

Q. That property, commencing with where it says: 9 engines, gas, 25 h. p. from there on down, all of that property is used immediately around the lease, is it not?

A. Yes, sir.

Q. Now those two steel tanks, 105 barrels, what are they used for?

A. To store oil in until we ship it to the pipe line.

Q. Is that what you call stock tanks?

A. Yes, sir.

Q. That 65 barrel steel tank, what is that?

A. Separating tank we pump into.

Q. Where you separate oil from water?

A. Yes, sir.

Q. The nine wooden tanks, what are they used for?

A. To circulate water.

Q. Where you circulate water through the various engines you have running?

A. Yes, sir.

Q. Casing, ranging from 15½ inch in size down to 5 3/16 inch, is that used in the various wells?

[fol. 103] A. Yes, I couldn't swear that all of that pipe was there, because sometimes they pull the pipe.

Q. Has there been any casing pulled in those wells?

A. Not since I have been there.

Q. How long have you been there?

A. Since the 16th of June, 1930.

Q. The 27,986 feet of sucker rods are used there in pumping the wells.

A. Yes, sir.

Q. The line of pipe shown here is the pipe used to connect the wells to the various tanks.

A. Yes, sir.

Q. The other miscellaneous fittings and supplies, are various valves and gauges and things used in connection with the wells?

A. Yes, sir.

Q. One dwelling house, that is a sectional house.

A. Yes, sir.

Q. State how the company buys their field houses, in

what condition, do they buy the lumber and build them, or are they ready built?

A. This was ready built, it come in sections, then we put it together.

Q. That house is not on wheels.

A. No, sir.

Q. It is on a foundation?

A. Yes, sir.

[fol. 104] Q. And an employe of the company lives in it.

A. Yes, sir, the pumper.

Q. The garage, what is it used for?

A. For this pumper's car.

Q. Is there a company truck also stored there?

A. Yes, sir.

Q. The car is used for the convenience of the pumper in covering his territory.

A. Yes, sir.

Q. The truck is used for hauling material and supplies back and forth on the lease.

A. Yes, sir.

Q. The tool house, what is it used for?

A. To keep tools and things in.

Q. As a matter of fact, on the first of January, it was empty, wasn't it?

A. Yes, sir.

That is all.

Cross-examination.

By Mr. Jenkins:

Q. How far up from Yale is this lease?

A. Perhaps a mile, or mile and a half.

Q. It isn't altogether necessary that they have this dwelling house out there on the lease for these people to live in if it is just a mile from Yale.

A. It is.

Q. Isn't there vacant houses in Yale?

A. Yes, sur, but we require a man to live on the place, so [fol. 105] he can look after it.

Q. This garage, what is it used for?

A. For the pumper's car, and truck.

Q. Is that garage necessary in the production of oil?

A. Yes, sir, it is.

Q. Couldn't that pumper pump oil as well if his car was setting out?

A. No, sir.

Q. He couldn't do it?

A. No, sir.

Q. The oil wouldn't come out.

A. No, sir, this man needs his car. In bad weather, he couldn't start it to get around, if he left it setting out.

Q. This tool house here, what is that used for.

A. For various tools we have.

Q. Is that tool house used in the actual production of the oil?

A. It is.

Q. And these engines, what do you use them for?

A. To furnish power.

Q. Is there an engine used with each derrick?

A. Yes, sir.

Q. And this pump, 4 h. p. what is it used for?

A. To pump oil out of stock tanks when we sell oil.

Q. You use the one pump for all of it?

A. Yes, sir.

Q. This water well equipment, what is that for?

A. To furnish fresh water to circulate through the engines.

[fol. 106] Q. What is this, 1—65 bbl. steel tank for?

A. To pump in to separate the water from the oil.

Q. This 389 foot of casing, what is that casing used for?

A. To shut off surface water.

Q. Is that used in the production of the oil?

A. Yes, sir.

Q. And what is this 8½ inch steel casing for?

A. For the same purpose, shutting off water.

Q. And the 6⅝ casing, what is it for?

A. The same purpose.

Q. And this 5 3/16 is that for the same purpose?

A. Yes, sir.

Q. These sucker rods, what are they?

A. To lift this oil to the surface.

Q. Then the pipe line, what is that for?

A. To carry the oil to these stock tanks.

Q. How big are those stock tanks?

A. About a hundred barrel, or a hundred and five.

Q. Does any of this 6,200 feet of pipe line go off of this particular lease?

A. No, sir.

Q. Then you have 16,610 feet of 2 inch pipe line, what is that for?

A. To carry oil, gas and water.

That is all.

Redirect examination.

By Mr. Wilhite:

Q. This house the pumper lives in is furnished by the Company.

[fol. 107] A. Yes, sir.

Q. Will you state what the company's ruling is, relative to the storage of cars, will they allow them kept out in all kinds of weather?

A. No, sir.

Q. It is a ruling of the company's that they be stored under cover when not in use.

A. Yes, sir.

Q. I believe you stated it was a requirement of the company that the pumper live on the lease he operates?

A. Yes, sir.

Q. All of this casing that is listed there is necessary in the operation of wells, to prevent water circulation and caving.

A. Yes, sir.

Q. The way the wells are operated, you drill down, and put in casing, and drill further and put in smaller casing, and so on to the bottom of the hole?

A. Yes, sir.

That is all.

The witness is excused.

By Mr. Grubbs: On behalf of the Excise Board, J. M. Grubbs, member, makes the following statement with reference to the assessment under consideration at this time; on June 22, 1931, the Indian Territory Illuminating Oil Company appeared before this Equalization Board and [fol. 108] urged the elimination of this item of $20,537.56

on the grounds that the property was located on an Indian Lease, and cited an opinion by Judge Robert L. Williams, United States District Judge for the Eastern District of Oklahoma, and from a careful examination of said opinion, a motion was made by J. M. Grubbs, and seconded by W. W. Myatt, that this item be eliminated, as shown by the following excerpt from the minutes of that date, to-wit: "Motion by J. M. Grubbs, seconded by W. W. Myatt, to eliminate the item of $20,537.56 on drilling equipment on the southeast quarter of section seven, township nineteen north, range six east of the Indian Meridian, of the Indian Territory Illuminating Oil Company's tax assessment. Motion carried." At that time it was not urged that the two items returned under protest, of $42,602.13 and the other, $49,600.00 be eliminated, and these items were not considered by the board at said time.

By Mr. Wilhite: The Indian Territory Illuminating Oil Company at this time renounces any claim of exemption from ad valorem taxation on the nine empty steel tanks and the one cannon of the aggregate value of $49,600, and agrees that said protest on said items may be dismissed.

By Mr. Grubbs: That thereafter, on the 6th day of November, 1931, said motion above quoted was rescinded by action of the Board, according to the minutes, to-wit: "Motion by J. M. Grubbs, seconded by W. W. Myatt that the action of the Board in eliminating the item of $20,537.56 of the Assessment of the Indian Territory Illuminating Oil Company, made June 22, 1931 be reconsidered [fol. 109] and rescinded, and said item allowed to stand as originally made. Motion carried."

By Mr. Wilhite: I want to introduce at this time as an exhibit, the original tax assessment list as filed by the Indian Territory Illuminating Oil Company with the County Assessor on the 14th day of February, 1931, and ask leave of this Board at this time to withdraw the original and file in lieu thereof a carbon copy showing an acceptance of said return by the county assessor.

By Mr. Jenkins: No objections.

By Mr. Grubbs: It will be admitted.

(Thereupon, the original tax assessment list having been offered and admitted in evidence, and a carbon copy filed in lieu thereof, the same is hereto attached and made a part of this record.)

Tax Assessment List—January 1, 1931

Payne County, Oklahoma.

List or schedule of property, in the taxing municipalities hereinafter set forth, in the County of Payne, State of Oklahoma, owned, operated or under control of Indian Territory Illuminating Oil Company, Post Office Address: Drawer "L" Bartlesville, Oklahoma, engaged in the production of oil and gas on January 1, 1931.

[fol. 110]

Located in School District Consolidated No. 6, Union Township. Oil in Storage and Steel Tankage on the W½ SE¼ of Section 15–17N–5E—On Vockrodt Tank Farm

Tank No.	Age of tanks years	Age of oil years	True gravity oil	Amount oil barrels	Rate per barrel	Value	Amount extended for assessment
507	Over 7	1–5	35.9	48,281	$.55	$26,554.55	
516	Over 7	1–5	35.9	48,055	.55	26,430.25	
517	Over 7	1–5	36.2	47,440	.57	27,040.80	
518	Over 7	1–5	36.	47,577	.57	27,118.89	
519	Over 7	1–5	36.	48,211	.57	27,480.27	
528	Over 7	1–5	36.5	47,682	.57	27,178.74	
529	Over 7	1–5	36.4	47,449	.57	27,045.93	
530	Over 7	1–5	36.9	47,197	.55	25,958.35	
531	Over 7	1–5	36.9	47,469	.55	26,107.95	
				429,361		240,915.73	
	9–55,000 bbl. tanks over 7 years old, or 495,000 bbls. @ 10c					49,500.00	
						290,415.73	

Total value—School District Consolidated No. 6, Union Township $290,415.73

[fol. 111]

Located in School District No. 91, Eagle Township. Oil in Storage and Steel Tankage on E½ NE¼ of Section 35–19N–6E—On Spencer Tank farm

Tank No.	Age of tanks years	Age of oil years	True gravity oil	Amount oil barrels	Rate per barrel	Value	Amount extended for assessment
1025	Over 7	Empty	....	.....	....	.....	
1026	Over 7	1–5	37.5	36,782	$.59	$21,701.38	
1027	Over 7	1–5	37.5	37,342	.59	22,031.78	
1028	Over 7	1–5	37.8	37,681	.59	22,231.79	
1029	Over 7	1–5	37.5	10,287	.59	6,069.33	
1030	Over 7	Empty	....	.....	....	.....	
1031	Over 7	Empty	....	.....	....	.....	
1040	Over 7	1–5	37.2	35,484	.59	20,935.56	
1041	Over 7	1–5	37.3	37,034	.59	21,850.06	
1042	Over 7	1–5	37.5	37,128	.59	21,905.52	
1043	Over 7	1–5	37.5	37,042	.59	21,854.78	
				268,780		158,580.20	
	11–55,000 bbl. tanks, over 7 years old of 605,000 bbls. @ 10c					60,500.00	
						$219,080.20	

Total value—School District No. 91, Eagle Township $219,080.20

[fol. 112] School District No. 91, Eagle, Township (Continued.)

The following rendered under protest and exception claimed from ad valorem valuation and taxes:

72,207 bbls. oil produced from lands of restricted Indians of Five Civilized Tribes (stored in tanks on E½ NE¼ Section 35-19N-6E), Gravity 37 degrees, from 1 to 5 years of age @ 59¢ $42,602.13.

Located in School District No. 102, Eagle Township steel tankage on east 56½ acres of the E½ of SE¼ of section 35–19N–6E on Spencer tank farm:

Quantity	Article of property	Rate	Value	Amount extended for assessment
9	Empty steel tanks, 55,000 bbls. each, more than 7 years old (Nos. 1024, 1032, 1033, 1034, 1035, 1037, 1038 and 1039) or 495,000 bbls.	$.10	$49,500.00	
1	Cannon	...	100.00	
			$49,600.00	
Total value—School District No. 102, Eagle Township				$49,600.00

Located in School District No. 103, Eagle Township Personal property situated on SE¼ of section 7-19N-6E—on Wilson Moore Farm, used in connection with the operation of wells Nos. 1 to 9, inclusive for the production of oil and natural gas:

[fol. 113]

Quantity	Article of property	Rate	Value	Amount Extended for Assessment
1	Dwelling, portable	.....	$265.95	
1	Garage	.....	45.87	
1	House, tool	.....	20.48	
9	Engines, gas 25 HP	$175.00	1575.00	
1	Pump, 4 HP	.....	80.00	
8	Derricks, pumping wood	100.00	800.00	
1	Derrick, pumping, wood	.....	100.00	
2	Tanks, steel 105 bbl.	.15	31.50	
1	Tank, steel, 65 bbl.	.15	9.75	
9	Tanks, wood 250 bbl.	.25	562.50	
389′	Casing, 15½″ steel	1.00	389.00	
9406′	Casing, 8¼″ steel	.29	2727.74	
23272′	Casing, 6 5/8″ steel	.225	5236.20	
12295′	Casing 5 3/16″ steel	.175	2151.62	
27986′	Tubing 2″—steel	.06	1679.16	
27986′	Rods, sucker—¾″	.02	559.72	
6200′	Pipe, line (6 5/8 csg.)	.225	1395.00	
16610′	Pipe, line, 2″	.05	830.00	
	Miscl. Pipe fittings, supplies and all other property	.....	1984.87	
Total value School District No. 103, Eagle Township				$20,537.56

[fol. 114]

Summary

State.....$579,633.49
County..... 579,633.49

School Districts	Valuation Townships		
	Eagle	Union	Total
No. 91	$219,080.20		$219,080.20
No. 102	49,600.00		49,600.00
No. 103	20,537.56		20,537.56
Consol No. 6		$290,415.73	290,415.73
Total	$289,217.76	$290,415.73	$579,633.49

(Stamp:) Approved Originating Dept. HMP. Legal dept. Subs'nce Execut'N CEW.

STATE OF OKLAHOMA,
County of Washington, ss:

I, the undersigned affiant, do solemnly swear or affirm, that I am secretary of Indian Territory Illuminating Oil Company; that I have read the within and foregoing statement and schedule, and am familiar with the statements therein contained; that each and all of such statements are true, and that said statement and schedule contains a full, true, complete and correct list and valuation of the personal property of said company in Payne County, Oklahoma, as it existed on January 1, 1931.

E. B. Emenhiser, Secretary.

Subscribed and sworn to in my presence on this 11 day of Feb. 1931. Chas Farr, Notary Public. My commission expires Aug. 16, 1933. (Seal.)

[fols. 115-126] I hereby acknowledge receipt of the original copy hereof filed in my office on this 14 day of Feby. 1931.

M. E. Basil, Assessor, Payne County.

By Mr. Wilhite: The Indian Territory Illuminating Oil Company at this time introduces in evidence the original oil and gas mining lease covering the southeast quarter (SE@) of section seven (7), township nineteen (19) north, range six (6) east, Payne County, Oklahoma, and asks

leave to withdraw the original and file in lieu thereof, photostat copy.

By Mr. Jenkins: No objections.

By Mr. Grubbs: It will be admitted.

(Thereupon, the original oil and gas mining lease having been offered and admitted in evidence, and permission granted to withdraw the original and file in said cause a photostat copy thereof, the same is hereto attached and made a part of this record.)

Omitted. Printed side page 66, ante.

[fols.127-129] By Mr. Wilhite: We also ask leave to admit in evidence the assignment of said oil and gas lease from the original lessee to this company, and ask leave to withdraw such original and file a photostat copy.

By Mr. Grubbs: It will be admitted.

Omitted. Printed side page 78, ante.

[fol. 130] By Mr. Wilhite: It is stipulated and agreed that the Indian Territory Illuminating Oil Company, on January 1, 1931, as shown by its return, had in storage 72,207 barrels of crude oil of 37° gravity, from 1 to 5 years of age, which oil was produced by said company from lands owned by a restricted Indian, to-wit: Lavina Walker, Seminole Full Blood, Roll No. 1577, and that said company, in its return, returned said oil under protest and claimed exemption from ad valorem taxation thereon.

[fol. 131] By Mr. Wilhite: The Indian Territory Illuminating Oil Company at this time offers in evidence photostat copies of the original oil and gas mining lease executed February 27, 1930, by Lavina Walker, to W. C. Terry, together with photostat copies of assignments respectively from W. C. Terry to J. W. Sharp, from J. W. Sharp to H. C. Pouder, from H. C. Pouder to W. H. Pomeroy and from W. H. Pomeroy to this company.

(Thereupon, photostat copies of the original oil and gas mining lease from Lavina Walker to W. C. Terry, together

with Photostat copies of assignments from W. C. Terry to J. W. Sharp, from J. W. Sharp to H. C. Pouder, from H. C. Pouder to W. H. Pomeroy, and from W. H. Pomeroy to the Indian Territory Illuminating Company, having been offered and admitted in evidence, the same are hereto attached and made a part of this record.)

ITIO Lease No. 871. Louina Walker. No. 10078

Form A, Series 1908—Approved April 20, 1908

Amended February 6, and June 29, 1911

Volume 154, Page 290

(Stamp:) Received Mar. 1, 1922.
(Stamp: Received Supt. Five Civ. Tribes, cashier Mar. 26, 1920. 26355.
(Stamp:) Received May 3, 1921, Supr. Five Civilized tribes. 31632.
(Stamp:) Office of Indian Affairs. Received Apr. 17, 1920. 33143.
(Stamp:) Office of Indian Affairs. Received Apr. 28, 1922. 24410.
(Stamp:) Department, received Jun. 10, 1921, No. 3663. Supt. Five Civilized tribes.
(Stamp:) Office of Indian Affairs. Received May 26, 1921.. 43300. Royalty No. 62172

(All of the above are stamped on the face of the lease.)

[fol. 132] Oil and Gas Mining Lease Upon Land Selected for Allotment

Seminole Nation, Oklahoma

This indenture of lease, made and entered into in quadruplicate on this 27th day of February, A. D. 1920, by and between Louina Walker of Seminole, Oklahoma, enrolled as a full blood citizen of the Seminole Nation, Roll No. 1577, of the first part hereinafter designated as lessor, and W. C. Terry of Okmulgee, Oklahoma, party of the second part, hereinafter designated as lessee, under and in pursuance of the provisions of the Act of Congress approved May 27, 1908 (35 Stat. L. P. 312).

Witnesseth:

1. The lessor, for and in consideration of one dollar, the receipt whereof is hereby acknowledged, and of the royalties, covenants, stipulations and conditions hereinafter contained, and hereby agreed to be paid, observed and performed by the lessee, does hereby demise, grant, lease, and let unto the lessee, for the term of ten years from the date of the approval hereof by the Secretary of the Interior, and as much longer thereafter as oil or gas is found in paying quantities, all the oil deposits and natural gas in or under the following described tract of land, lying and being within the county of Seminole and State of Oklahoma, to-wit: The east half of the southeast quarter of section 15; and the northeast quarter of the northeast quarter of section 22, township 8, range 6 of the Indian Meridian, and containing 120 acres, more or less, with the exclusive right to prospect for, extract, pipe, store and remove oil and [fol. 133] natural gas, and to occupy and use so much, only of the surface of said land as may reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing, and removing such oil and natural gas, also the right to obtain from wells or other sources on said land by means of pipe lines or otherwise, a sufficient supply of water to carry on said operations, and also the right to use, free of cost, oil and natural gas as fuel so far as necessary to the development and operation of said property.

2. The lessee hereby agrees to pay or cause to be paid to the Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, for the lessor, as royalty, the sum of 12½ per cent of the gross proceeds of all crude oil extracted from the said land, such payment to be made at the time of sale or removal of the oil. And the lessee shall pay as royalty on each gas producing well three hundred dollars per annum in advance, to be calculated from the date of commencement of utilization; provided, however, in the case of gas wells of small volume, when the rock pressure is one hundred pounds or less, the parties hereto may, subject to the approval of the Secretary of the Interior, agree upon a royalty, which will become effective as a part of this lease; provided, further, that in case of gas wells of small volume, or where the wells produce both oil and gas or oil and gas and salt water to such extent that the gas is unfit for ordi-

nary domestic purposes, or where the gas from any well is desired for temporary use in connection with drilling and pumping operations on adjacent or nearby tracts, the [fol. 134] lessee shall have the option of paying royalties upon such gas wells of the same percentage of the gross proceeds from the sale of gas from such wells as is paid under this lease for royalty on oil. The lessor shall have the free use of gas for domestic purposes in his residence on the leased premises, provided there shall be surplus gas produced on said premises over and above enough to fully operate the same. Failure on the part of the lessee to use a gas producing well, which cannot profitably be utilized at the rate herein prescribed shall not work a forfeiture of this lease so far as the same relates to mining oil, but if the lessee desires to retain as producing privileges, the lessee shall pay a rental of one hundred dollars per annum, in advance, calculated from the date of discovery of gas, on each gas producing well, gas from which is not marketed or not utilized otherwise than for operations under this lease. Payments of annual gas royalties shall be made within twenty five days from the date such royalties become due, other royalty payments to be made monthly on or before the 25th day of the month succeeding that for which such payment is to be made, supported by sworn statements.

3. Until a producing well is completed on said premises the lessee shall pay, or cause to be paid, to said Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, for lessor, as advanced annual royalty, from the date of the approval of this lease, fifteen cents per acre per annum, annually, in advance for the first and second years; thirty cents per acre per annum, annually, in advance for the third and fourth years; seventy five cents [fol. 135] per acre per annum, annually, in advance, for the fifth year; and one dolar per acre per annum, annually, in advance, for each succeeding year of the term of this lease; it being understood and agreed that such sums of money so paid shall be a credit on stipulated royalties, and the lessee hereby agrees that said advance royalty when paid shall not be refunded to the lessee because of any subsequent surrender or cancellation thereof; nor shall the lessee be relieved from its obligation to pay said advance

royalty annually when it becomes due, by reason of any subsequent surrender or cancellation of this lease.

4. The lessee shall exercise diligence in sinking wells for oil and natural gas on land covered by this lease and shall drill at least one well thereon within one year from the date of approval of this lease by the Secretary of the Interior, or shall pay to said Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, for the use and benefit of the lessor, for each whole year the completion of such well is delayed after the date of such approval by the Secretary of the Interior, for not to exceed ten years from the date of such approval, in addition to the other considerations named herein, a rental of one dollar per acre payable annually; and if the lessee shall fail to drill at least one well within any such yearly period and shall fail to surrender this lease by executing and recording a proper release thereof and otherwise complying with paragraph numbered 7 hereof on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken and held as conclusively evi- [fol. 136] dencing the election and covenant of the lessee to pay the rental of one dollar per acre for such year and thereupon the lessee shall be absolutely obligated to pay such rental. The failure of the lessee to pay such rental before the expiration of fifteen days after it becomes due at the end of any yearly period, during which a well has not been completed as provided herein, shall be a violation of one of the material and substantial terms and conditions of this lease, and be cause for cancellation of such lease under paragraph numbered 9 hereof; but such cancellation shall not in any wise operate to release or relieve the lessee from the covenant and obligations to pay such rental, or any other accrued obligation. The lessee may be required by the Secretary of the Interior, or by such officer as may be designated by him for the purpose to drill and operate wells to offset wells on adjoining tracts, and within three hundred feet of the dividing line, or in case of gas wells lessee may have the option, in lieu of drilling offset wells, of paying a sum equal to the royalties which would accrue on each well to be offset if said wells had been drilled and were being operated on the land described herein and in accordance with the terms hereof. It is understood and agreed by the

parties hereto that offset wells shall be drilled or royalty paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirements shall constitute a violation of one of the substantial terms of this lease.

5. The lessee shall carry on development and operations in a workmanlike manner, commit no waste on the said land [fol. 137] and suffer none to be committed upon the portion in his occupancy or use, take good care of the same and promptly surrender and return the premises upon the termination of this lease to lessor or to whomsoever shall be lawfully entitled thereto, unavoidable casualties excepted shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lessee, but said building and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting tools, derricks, boiler, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells which shall remain the property of the lessee, and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; and shall not permit any nuisance to be maintained on the premises under lessee's control nor allow any intoxicating liquors to be sold or given away for any purposes on such premises; shall not use such premises for any other purpose than those authorized in the lease; and before abandoning any well shall securely plug the same so as effectually to shut off all water from the oil bearing stratum, or in the manner required by the laws of the State of Oklahoma.

6. The lessee shall keep an accurate account of all oil-mining operations, showing the sales, prices, dates, purchases, and the whole amount of oil mined or removed; and [fol. 138] all sums due as royalty shall be a lien on all implements, tools, movable machinery, and all other personal chattels used in operating said property and also upon all of the unsold oil obtained from the land herein leased, as security for payment of said royalty.

7. The lessee may at any time, by paying to the Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, all amounts then due as provided herein and the further

sum of one dollar, surrender and cancel this lease and be relieved from all further obligations or liability thereunder; provided, if this lease has been recorded lessee shall execute a release and record the same in the proper county recording office; provided, further, in event restrictions are moved from all leased premises, the lessee may surrender all the undeveloped portion thereof by paying the lessor all amounts then due and the further sum of one dollar, which surrender shall not affect the terms hereof as to each producing well and ten acres of said premises as nearly in square form as possible and next contiguous to and surrounding each of said wells, and execute and record a cancellation of premises surrendered.

8. This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease; provided, however, that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates [fol. 139] of royalty or payment thereunder, of the assignment of leases, shall operate to affect the terms and conditions of this lease.

9. Upon the violation of all of the substantial terms and conditions of this lease the Secretary of the Interior (or lessor, in event restrictions are removed as provided in paragraph 12 hereof) shall have the right, at any time after thirty days' notice to the lessee specifying the terms or conditions violated, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land.

10. Before this lease shall be in force and effect the lessee shall furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, and such further bond or bonds as may be required by said secretary, conditioned for the performance of this lease, which bond shall be deposited and remain on file in the Indian Office.

11. Assignment of this lease or any interest therein may be made with the approval of the Secretary of the Interior, it being understood that to secure such approval the proposed assignee need only be qualified to hold such a lease under the rules and regulations, and furnish a bond with

responsible surety to the satisfaction of the Secretary of the Interior, conditioned for the faithful performance of the covenants and conditions of this lease.

12. In event restrictions on alienation shall be removed from all the leasehold premises described above, this lease shall be released from the supervision of the Secretary of [fol. 140] the Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to said Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, shall thereafter be made to lessor or the then owner of said lands in person or be deposited to the credit of said lessor or his assigns at the First National Bank of Seminole, Okla., or such other place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease.

13. Each and every clause and covenant in this indenture shall extend to the heirs, executors, administrators successors and lawful assigns of the parties hereto.

14. In witness whereof, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned.

Louina Walker. (Thumbprint.) (Seal.) W. C. Terry.

Two witnesses to execution by lessor: R. W. Michael, Okmulgee, Oklahoma. R. G. Baugh, Jr., Okmulgee, Oklahoma.

Two witnesses to execution by lessee: R. G. Baugh, Jr., Okmulgee, Oklahoma. S. M. Anderson, Okmulgee, Oklahoma.

(Stamp:) Department, received Apr. 30, 1920. Encl. to No. 2340. Supt. Five Civilized Tribes.

[fol. 141] State of Oklahoma,
County of Okmulgee, ss:

Before me, a notary public in and for said county and state, on this 27th day of February, 1920, personally ap-

peared Louina Walker to me known to be the identical person who executed the within and foregoing lease, by her mark, in my presence and in the presence of R. W. Michael & R. L. Baugh, Jr., as witnesses, and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

Sylverster W. Rose, My commission expires Apr. 2, 1923. (Seal.)

Department of the Interior

Office of the Superintendent of the Five Civilized Tribes

Muskogee, Okla. Apr 13, 1920.

The within lease is forwarded to the Commissioner of Indian Affairs with recommendation that it be approved. See my report of even date.

Joe H. Strain, Superintendent for Five Civilized Tribes.

Department of the Interior

Office of Indian Affairs

Washington, D. C. Apr. 21, 1920.

Respectfully submitted to the Secretary of the Interior, with recommendation that it be approved.

E. B. Merrit, Assistant Commissioner.

Department of the Interior, Washington D. C. Apr. 24, 1920.

Approved. A. G. Kopelius, Assistant Sec-tary of the Interior.

[fol. 142] Filed in the office of the Superintendent for the Five Civilized Tribes this 26 day of Mch. 1920, at 3 o'clock p. m.

Gabe E. Parker, Superintendent, by Assistant.

(Stamp:) Department, Received Mar. 18, 1922. No. 17250. Supt. Five Civilized Tribes.

Lease No. 42147

June 4, 1921.

Department of the Interior, Washington, D. C.

The assignment of this lease by W. C. Terry of all his interest to J. W. Sharp, is approved, effective only from date of approval, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

F. M. Goodwin, Assistant Secretary.

Lease No. 42147

May 5, 1922.

Department of the Interior, Washington, D. C., May 5, 1922

The assignment of this lease by J. W. Sharp to H. C. Pouder is approved, effective only from date of approval subject to the orders and regulations of this department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the [fol. 143] Interior, and the royalty shall be 12½ per cent on such price basis.

F. M. Goodwin, Assistant secretary.

Lease No. 42147

Department of the Interior, Washington, D. C.

Mar. 31, 1923.

The assignment of this lease by H. C. Pouder of all his interest to W. H. Pomeroy is approved, effective only from da-e of approval, subject to the orders and regulations of this department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared

by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

F. M. Goodwin, Assistant Secretary.

STATE OF OKLAHOMA,
Seminole County:

I hereby certify that this instrument was filed for record in my office on the 12 day of March, 1924 at 1 p. m. and duly recorded in record 154 on page 290.

Ellis Cooper, County Clerk, by R. E. Caldwell, Deputy.

ITIO Lease No. 871. Louina Walker

Assignment of Oil and Gas Lease

Whereas, the Secretary of the Interior has heretofore approved an oil and gas mining lease dated February 27th, 1920, entered into by and between W. C. Terry of Okmulgee, Oklahoma, lessee and Louina Walker of Semi- [fol. 144] nole, Oklahoma, lessor covering the following described lands in the Seminole Nation, Oklahoma, East half of the southeast quarter (E½ SE¼) of section fifteen (15); and the northeast quarter (NE¼) of the northeast quarter (NE¼) of estcion twenty two (22), township eight (8) north, range six (6) east.

Now, therefore, for and in consideration of one ($1.00) dollars, the receipt of which is hereby acknowledged, the said W. C. Terry, the lessee in the above described lease, hereby bargains, sells, transfers, assigns and conveys all his right, title and interest of the lessee in and to said lease, subject to the approval of the Secretary of the Interior to J. W. Sharp of Okmulgee, Oklahoma. Said assignment to be effective from date of approval hereof by the Secretary of the Interior.

In witness whereof, the said lessee has hereunto set his hand and seal this 27th day of April, 1921.

W. C. Terry.

STATE OF OKLAHOMA,
County of Okmulgee, ss:

Before me, Orella M. Robe, a notary public in and for said county and state, on this 27th day of April, 1931 per-

sonally appeared W. C. Terry to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Orella M. Robe, Notary Public. My commission expires June 20, 1924. (Seal.)

[fol. 145] Acceptance by Assignee

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set his hand and seal this 27th day of April, 1921.

J. W. Sharp.

STATE OF OKLAHOMA,
County of Seminole, ss:

I hereby certify that this instrument was filed for record in my office the 12 day of Mch. A. D. 1924 at 1 o'clock p. m. and duly recorded in record 156 page 197.

Ellis Cooper, County Clerk, by R. E. Criswell.

ITIO Lease No. 871. Louina Walker

Assignment of Oil and Gas Lease

Whereas, the Secretary of the Interior has heretofore approved an oil and gas mining lease, dated February 27th 1920, entered into by and between Louina Walker, lessor and W. C. Terry, lessee covering the following described lands in the Seminole Nation, Oklahoma; East half of southeast quarter of section 15; and the northeast quarter [fol. 146] of the northeast quarter of section 22, township 8, range 6; and

Whereas, on the 27th day of April, 1921, W. C. Terry, the lessee, assigned all his interest to J. W. Sharp, said

assignment being approved by the Secretary of the Interior on June the 4th, 1921.

Now therefore, for and in consideration of one ($1.00) dollars, the receipt of which is hereby acknowledged, the said J. W. Sharp the assignee in the above-described lease hereby bargains, sells, transfers, assigns, and conveys all his right, title, and interest in the lessee in and to said lease, subject to the approval of the Secretary of the Interior to H. C. Pouder of Tulsa, Okla. Said assignment to be effective from date of approval hereof by the Secretary of the Interior.

In witness whereof, the said assignee has hereunto set his hand and seal, this 9th day of March, 1922.

J. W. Sharp.

STATE OF OKLAHOMA,
County of Okmulgee, ss:

Before me, Orella M. Robe, a notary public in and for said county and state, on this 9th day of March, 1922, personally appeared J. W. Sharp to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Orella M. Robe, Notary Public. My commission expires June 29, 1924. (Seal.)

[fol. 147] Acceptance by Assignee

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set my hand and seal this 11th day of March, 1922.

H. C. Pouder.

STATE OF OKLAHOMA,
Seminole County, ss:

I hereby certify that this instrument was filed for record in my office the 12 day of Mch. A. D. 1924 at 1 o'clock P. M. and is duly recorded in record 156 page 199.

Ellis Cooper, County Clerk, by R. E. Crisewell.

ITIO Lease No. 871. Louina Walker

Assignment of Oil and Gas Lease

Whereas, the Secretary of the Interior has heretofore approved an oil and gas mining lease, dated February 27 1920 entered into by and between W. C. Terry, lessee and Louina Walker, lessor, covering the following described lands in the Seminole Nation, Oklahoma: East half of southeast quarter of section 15, and the northeast quarter of [fol. 148] northeast quarter of section 22, township 8 range 6.

Now, therefore, for and in consideration of one ($1.00) dollars, the receipt of which is hereby acknowledged, H. C. Pouder, assignee of the lessee in the above described lease, hereby bargains, sells, transfers, assigns, and conveys all his right, title and interest of the lessee in and to said lease, subject to the approval of the secretary of the Interior to W. H. Pomeroy of Tulsa, Oklahoma. Said assignment to be effective from date of approval hereof by the Secretary of the Interior.

In witness whereof, the said lessee has hereunto set his hand and seal this 21st day of February, 1923.

H. C. Parker.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, Edna B. Faris, a notary public in and for said county and state, on this 21st day of February, 1923, personally appeared H. C. Pouder to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Edna B. Faris, Notary Public. My commission expires Sept. 25, 1923. (Seal.)

Acceptance by Assignee

The assignee in the above and foregoing assignment made [fol. 149] subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set his hand and seal this 21st day of February, 1923.

W. H. Pomeroy.

STATE OF OKLAHOMA,
Seminole County, ss:

I hereby certify that this instrument was filed for record in my office the 12 day of Mch. A. D. 1924, at 1 o'clock p. m. and duly recorded in book 156 page 195.

Ellis Cooper, County Clerk, by R. E. Criswell.

ITIO Lease No. 871. Louina Walker

Assignment of Oil and Gas Lease

Whereas, the Secretary of the Interior has heretofore approved an oil and gas mining lease, dated February 27th 1920, entered into by and between Louina Walker, lessor and W. C. Terry, lessee, covering the following described lands in the Seminole Nation, Oklahoma; East half of the southeast quarter of section 15, and the northeast quarter of the northeast quarter of Section 22, township 8, range 6.

Now, therefore, for and in consideration of one ($1.00) [fol. 150] dollars, the receipt of which is hereby acknowledged, W. H. Pomeroy assignee of the assignee of the lessee in the above described lease, hereby bargains, sells, transfers, assigns and conveys all his right, title and interest of the lessee in and to said lease in so far as it covers the east half of the southeast quarter of section 15, township 8 range 6 subject to the approval of the Secretary of the Interior to the Indian Territory Illuminating Oil Company of Bartlesville, Okla. Said assignment to be effective from the date of approval hereof by the Secretary of the Interior.

In witness whereof, the said lessee has hereunto set his hand and seal this 9th day of February, 1924.

W. H. Pomeroy.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, Edna B. Faris, a notary public in and for said county and state, on this 9th day of February, 1924 personally appeared W. H. Pomeroy to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Edna B. Faris. My commission expires Sept. 25, 1927. (Seal.)

Acceptance by Assignee

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the In- [fol. 151] terior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

Witness whereof the said assignee has hereunto set its hand and seal this 25th day of February, 1924.

Indian Territory Illuminating Oil Company, by Burdette Blue, Vice President. (Seal.)

Attest: C. H. Caldwell, Secretary.

STATE OF OKLAHOMA,
Seminole County, ss:

I hereby certify that this instrument was filed for record in my office the 7 of April, A. D. 1924 at 8 o'clock a. m. and was duly recorded in record 161 page 202.

Ellis Cooper, County Clerk.

By Mr. Wilhite: That is all of our evidence, Mr. Grubbs.

By Mr. Grubbs: I will make a motion we overrule the protest.

By Mr. Myatt: I second the motion.

By Mr. Melton: The motion carried.

By Mr. Wilhite: From which order, ruling and decision of the County Board of Equalization the Indian Territory [fol. 152] Illuminating Oil Company gives notice of its intention to appeal to the District Court of Payne County, Oklahoma.

And this is all of the evidence and testimony offered or introduced in the above hearing.

BEFORE THE BOARD OF EQUALIZATION IN AND FOR PAYNE COUNTY, OKLAHOMA

In the Matter of the Protest of Indian Territory Illuminating Oil Company on Assessment of Personal Property for the Year 1931-1932

JOURNAL ENTRY

Now on this 18th day of November, 1931, the above entitled matter comes on to be heard before the Board of Equalization of Payne County, Oklahoma, said Board being regularly in session and all members thereof being present, and said Company being represented by its attorney, C. E. Wilhite, and Payne County, Oklahoma, being represented by its County Attorney, Ernest F. Jenkins, and all parties announcing ready, said cause proceeds to hearing.

Whereupon, complainant, Indian Territory Illuminating Oil Company, introduces evidence in support of the items of its complaint, and in addition, certain facts are stipu- [fol. 153] lated and agreed to, as shown by the transcript wherein such stipulation and agreed statement was dictated into the record made by the County Court Reporter, and upon conclusion and presentation of such evidence, complainant rests; that no evidence is offered by the county attorney, who rests, and said Board, being advised in the premises, finds:

That said property claimed exempt from ad valorem taxation, to-wit: certain personal property located on what is known as complainant's "Wilson-Moore lease", described

as the southeast quarter of section 7, township 19 north, range 6 east, Payne County, Oklahoma, and the further item of 72,207 barrels of crude oil, produced from lands owned by — restricted Indian, and stored in tanks on the east half of the northeast quarter of section 35, township 19 north, range 6 east, I. M. Payne County, Oklahoma, of the values respectively of $20,537.56 and $42,602.13 should not be held so exempt from ad valorem taxation, and that the claim of Complainant of such exemption should be denied.

It is therefore by the Board of Equalization, ordered by motion of J. M. Grubbs, seconded by W. W. Myatt, which motion was carried, that the claim of exemption from ad valorem taxation on said property above described, be and the same is hereby denied.

To which decision of said Board, said complainant by and through its attorney, gave notice of appeal from said decision, to the District Court of Payne County, Oklahoma.

[fol. 154] Dated this day and date first above set forth.

C. A. Melton, Chairman, Board of Equalization.

OK: C. E. Wilhite, Attorney for complainant Ernest F. Jenkins, County Attorney.

Indorsed on Back: Before Board of Equalization of Payne County, Okla. Protest of I. T. I. O. Journal entry. Filed Nov. 18, 1931. V. A. Doty, County Clerk, Payne County, Oklahoma.

(And thereafter, and on the 18th day of November, 1931, the Indian Territory Illuminating Oil Company gives notice of its intention to appeal to the District Court of Payne County, Oklahoma, which notice is in words, letters and figures as follows, to-wit:)

BEFORE THE BOARD OF EQUALIZATION IN AND FOR PAYNE COUNTY, OKLAHOMA

To the Board of Equalization of Payne County, Oklahoma, the Honorable County Assessor of Payne County, Oklahoma, and the Honorable County Clerk of Payne County, Oklahoma, Greeting:

You, and each of you, are hereby notified that the Indian Territory Illuminating Oil Company, a corporation, in-

tends to, and does hereby appeal from the ruling, order and decision of said Board of Equalization, to the District Court of Payne County, Oklahoma, as provided by law.

That said Appeal is perfected for and on account of an order made by said Board of Equalization denying a claim of exemption from ad valorem taxation on behalf of appel- [fol. 155] lant company, wherein it was urged before said Board that said property, to-wit:

Personal property, including house, garage, derricks, tool house, casing, engines, and miscellaneous equipment, located on Appellant's "Wilson-Moore farm" otherwise described as the southeast quarter of section 7, township 19, north, range 6 E. I. M. Payne County, Oklahoma, and

72,207 barrels of crude oil, in storage, produced by complainant and appellant from land owned by a restricted Indian, to-wit: Lavina Walker, Seminole Full blood, Roll No. 1577, and stored on appellant's "Spencer Tank farm", located on the east half of the northeast quarter of section 35 township 19 N. range 6 E. I. M. Payne County, Oklahoma was exempt from ad valorem taxation for the reasons: (1) That said personal property first above listed, is property used in the actual operation for oil and gas and used in the actual production of oil and gas from a producing lease and that the lands from which such production is had and and on which said property is stored is land owned by a restricted Indian, and or his heirs and that such restrictions have not been removed, and (2) that the cride oil in storage was produced by appellant from land owned by a restricted Indian, under terms of an oil and gas mining lease approved by the United States Department of Interior and that in the production thereof, Appellant was and is a governmental instrumentality and that such oil, being non-taxable at its source, is not subject to ad valorem [fol. 156] taxation at any time before the same is marketed.

You are notified that said appellant intends to, and will, prosecute its appeal from the decision of said Board to the District Court of Payne County, Oklahoma, as above set forth. You will govern yourselves accordingly.

Dated this 18th day of November, 1931.

Indian Territory Illuminating Oil Company, Appellant, by C. E. Wilbite, its Attorney.

STATE OF OKLAHOMA,
County of Payne, ss:

Service of the foregoing notice of appeal is hereby acknowledged to have been made on each of us, the undersigned, by leaving a true copy thereof on this 18th day of November, A. D. 1931.

C. A. Melton, Chairman, Board of Equalization.
V. A. Doty, County Clerk, Payne County, Oklahoma.

(Stenographer's certificate following.)

(And plaintiff's exhibit "I" having been offered in evidence by the plaintiff, and rejected by the court, the same is set out here in words, letters and figures as follows, to-wit:)

[fols. 157-164] PLAINTIFF'S EX. "I"

Journal entry of judgment in the matter of the Assessment of Personal Property of the Indian Territory Illuminating Oil Company, a corporation, for the year 1931 omitted. Printed side page 28, ante.

[fol. 165] By Mr. Prentice: The plaintiff rests.

By Mr. Horton: Comes now the defendant and demurs to the testimony and evidence of the plaintiff for the reason that the evidence shows on its face that the plaintiff is not entitled to the relief prayed for in its petition, and for the further reason that the testimony and evidence do not support the allegations contained in the petition of the plaintiff.

By the Court: Over-ruled.

By Mr. Horton: Exception.

J. H. BLANKENSHIP is hereupon called as a witness on behalf of the defendant, and having been duly sworn to tell the truth, the whole truth and nothing but the truth, testifies as follows, to-wit:

Direct examination.

By Mr. Horton:

Q. State your name?

A. J. H. Blankenship.

Q. What office, if any do you hold in Payne County, Oklahoma?

A. County Assessor.

Q. Were you the duly elected, qualified and acting county assessor of this county on January 1, 1933 and up until this time?

A. Yes, sir.

[fol. 166] Q. I will hand you what has been marked defendant's exhibit "1" and I will ask you to state what that is?

A. This, on last year, after their tax renditions were in, there had been some property listed by the I. T. I. O. upon which was on restricted Indian land and they claimed exemptions. and by your instruction, I run that on the tax roll and notified the company sometime in August last year.

Q. How did you give them notice?

A. I made the notice and registered the notice—the original of which that is a copy.

Q. Did you send it by registered mail?

A. Yes, sir.

Q. Did you or not require a return receipt?

A. I did.

Q. And did you get a return receipt?

A. Yes, sir.

Q. And is it attached to a copy of this notice?

A. Yes, sir, this is the original receipt I received.

Q. Do you testify that you sent a copy of that notice which I am showing you?

A. I sent the original.

Q. And retained the copy.

A. Yes, sir.

Q. And this is defendant's exhibit "1"?

A. Yes, sir.

By Mr. Horton: We offer defendant's exhibit "1" in evidence.

[fol. 167] By Mr. Prentice: Objected to as incompetent, irrelevant and immaterial.

By the Court: Well, let it be admitted.
By Mr. Prentice: Exception.

(Thereupon, defendant's exhibit "1" having been offered and admitted in evidence, the same is set out here in words, letters and figures as follows, to-wit:)

DEFENDANT'S EXHIBIT 1

Indian Territory Illuminating Company

Payne County, Oklahoma

List and Value of Property Used in and Around Producing Wells, Located in Eagle Township, School District No. 103

Personal Property situated on SE/4 Section 7-19N-6E, on Wilson-Moore farm, used in connection with the operation of well Nos. 1-2-3-4-5-6-7- and 9, for the production of Oil and natural gas.

	Rate	Value
1 Drilling, portable	.....	$185.00
1 Garage	.....	33.18
1 Tool house	.....	14.03
7 Engines, Gas, 25 HP	166.25	1163.75
1 pump, 4 HP	.....	62.70
1 water well equipment	.....	76.00
3 derricks, wood, pumping	72.32	216.96
2 derricks, Steel, pumping	95.00	190.00
2 tanks, steel—105 bbl. (Per bbl.)	.075	15.75
1 tank, steel—65 bbl. (Per bbl.)	.075	4.87
8 tanks, wood—250 bbl. (Per bbl.)	.125	250.00
[fol. 168]		
389' Casing, steel—15½"	.95	369.55
9406' Casing, steel—8¼"	.275	2586.65
20341' Casing, steel—6 5/8"	.21	4271.61
9208' Casing, steel—5 3/16"	.165	1519.32
24836' Tubing, steel—2"	.06	1490.16
24836' Rods, sucker ¾"	.02	496.72
6200' Pipe, line—6 5/8" csg	.15	930.00
16610' Pipe, line 2"	.02	332.20
1 Trailer, Truck—1¼ ton	.....	96.16
Miscellaneous pipe, fittings and other property	.....	1508.31
76 bbls. oil in stock tanks—37.90 gravity	.73	55.48
Total value, property used in and around producing wells		$15,869.23

I. T. I. O. Co., Bartlesville, Okla.

DEAR SIRS:

You are hereby notified that within 12 days from date of this notice the above described property will be placed on the Assessment rolls, later to be extended on the tax rolls, believing same to subject to ad valorem tax in this county.

Very truly, —— ——, County Assessor, Payne County.

Dated August 18th, 1933.

(Registered article return card attached as follows:)

[fol. 169] Post Office Department Official Business.
Registered Article No. 290.
Insured Parcel.
Penalty for private use to avoid payment of postate, $300.

Postmark of delivering office. (Stamp:) Bartlesville, Okla., Aug. 19, 1933, 10:30 A. M.

Return to J. H. Blankenship, County Assessor, Stillwater, Oklahoma.

(On the reverse side of same instrument:) Return receipt. Received from the postmaster the registered or insured article, the original number of which appears on the face of this card. Ind. Terr. Ill. Oil Co. Signature of addressee: Jack McReynolds, Signature of addressee's agent. —— ——. Date of Delivery Aug. 19, 1933.

Cross-examination.

By Mr. Prentice:

Q. When did you run this property upon the tax roll?

A. Sometime in the latter part of August. I think from our County Attorney's instructions, I run it on about 12 days after that notice. They told me I should give them 10 or 12 days notice, and I made the notice read 12 days.

Q. I hand you plaintiff's exhibit "A" which is the tax rendition made by the I. T. I. O. for 1933, that has been on file in your office.

A. Yes, sir.

[fol. 170] Q. Will you state whether or not that property which you give the notice on is located in the same township and school district as the other property rendered by the plaintiff in that rendition; is all the property of the plaintiff including the property set out in this notice located in Eagle Township?

A. This was in Eagle Township, and yes, in school District 103.

Q. I hand you plaintiff's exhibit "J" and ask you if that is your signature on that bottom of that exhibit?

A. The signature of my deputy.

By Mr. Prentice: We offer exhibit "J" in evidence.
By Mr. Horton: Objected to as incompetent, irrelevant and immaterial.
By the Court: Let it be admitted.
By Mr. Horton: Exception.

(Thereupon, plaintiff's exhibit "J" having been offered and admitted in evidence, the same is set out here in words, letters and figures as follows, to-wit:)

PLAINTIFF'S EXHIBIT J

Indian Territory Illuminating Oil Company and Subsidiary Companies

Bartlesville, Oklahoma,
October 15, 1933.

Payne County Assessor, Stillwater, Oklahoma.

DEAR SIR:

Please advise the approximate date you expect to certify the tax rolls to the county treasurer.
[fol. 171] Also, kindly indicate below the assessed valuation for the following property:

Real Property

As per the attached rendition—indicating the valuation opposite each fee

Personal Property

Eagle Township, S. D. #103, $1078.03.

We would appreciate a reply to this inquiry as soon as practicable.

Yours very truly, Indian Terr. Illum. Oil Co., by V. L. Hunt, Tax Department.

VLH: ES.

Reply

I expect to be able to certify my tax rolls about the 1st day of Jan., 1934.
I have indicated the assessed values as requested above.
Signed this 25 day of Oct., 1933.

J. H. Blankenship, Assessor for Payne County, Oklahoma.

Q. I call your attention to the notation on the bottom of this exhibit which is as follows "I expect to be able to certify my tax rolls about the 1 day of January, 1934. I have indicated the assessed values as requested above. Signed this 25 day of Oct., 1933. J. H. Blankenship, Assessor of Payne County, Oklahoma." And the other matter [fol. 172] appearing above that which shows personal property, Eagle Township, School District 103, $1078.03. Can you explain why you notified us in October that the personal assessment of our property for that township and school district was only $1078.03 and did not advise us at that time that you had run this other property on?

A. No, sir, I don't know how it come that that wasn't included in this notice, but I remember it is the custom of oil companies to ask for something like this when they file their assessments, and this assessment had been filed quite a bit before this time.

By the Court:

Q. Is that amount in there as in the assessment they returned?

A. Yes, sir.

Q. Doesn't include what you put on.

A. No, sir.

"That's all."

(Witness is excused.)

By Mr. Horton: Defendant rests.

By Mr. Prentice: Plaintiff rests.

By Mr. Horton: Comes now the defendant at the close of all of the testimony in the case and moves the court for judgment in its favor.

And this is all of the evidence offered and introduced in the trial of this case.

[fol. 173] Stenographer's certificate to foregoing transcript omitted in printing.

[fol. 174] IN THE DISTRICT COURT OF PAYNE COUNTY

[Title omitted]

MOTION FOR NEW TRIAL—Filed April 26, 1934

Comes now said defendant and moves the court to vacate and set aside the judgment rendered herein in the above entitled cause on the 26th day of April, 1934, and to grant a new trial for the following causes, which effect materially the substantial rights of said defendant.

1. That the judgment of the court is not sustained by sufficient evidence, or is contrary to law.

2. Error of law occurring at the trial, and excepted to by the defendant.

3. Error of the court in overruling the defendant's demurrer to the petition of the plaintiff.

4. Error of the court in overruling the defendants demur-
[fol. 175] rer to the evidence of the plaintiff.

5. Error of the court in overruling the motion of the defendant at the close of all the evidence for a judgment in its favor.

6. Error of the court in admitting incompetent and irrelevant and immaterial testimony and evidence on behalf of the plaintiff, said evidence being objected to by the defendant.

Guy L. Horton, County Attorney, Attorney for Defendant.

[File endorsement omitted.]

[fol. 176] IN THE DISTRICT COURT OF PAYNE COUNTY

[Title omitted]

JOURNAL ENTRY OF JUDGMENT, ETC.—Filed May 8, 1934

This cause coming on to be heard this 26th day of April, 1934, pursuant to regular assignment for trial before the Honorable Freeman E. Miller, Judge of the District Court of Payne County, Oklahoma, and the plaintiff appearing by

Donald Prentice, its attorney, and the defendant appearing by Guy Horton, County Attorney of Payne County, Oklahoma, and all parties announcing ready for trial, and the court after hearing the evidence and argument of counsel and being fully advised in the premises, and upon consideration thereof finds:

That on January 1, 1933, the plaintiff was the owner of a duly approved departmental oil and gas mining lease covering the southeast quarter of section 7, township 19 north, range 6 east, Payne County, Oklahoma, being the allotment of Wilson Moore, deceased, a restricted Pawnee Indian; said land now being owned by Belt Short Bear, Will Justice and Colonel Moore, a minor, restricted Pawnee Indians and heirs of the said Wilson Moore, deceased.

That the plaintiff drilled certain wells producing oil and [fol. 177] gas upon said land, and on January 1, 1933, had placed certain property, equipment and improvements upon said land, which were used in the operation of said wells and in the exploration and development of said lease and to produce and preserve the oil and gas therefrom in order of comply with the terms of said oil and gas mining lease, an itemized list of said property and its location being as follows, viz:

	Rate	Value
1 Dwelling, portable	.....	$185.83
1 Garage	.....	33.18
1 Tool house	.....	14.03
7 Engines, Gas, 25 HP	166.25	1163.75
1 pump, 4 HP	.....	62.70
1 water well equipment	.....	76.00
3 Derricks, wood, pumping	72.32	216.96
2 Derricks, Steel, pumping	95.00	190.00
2 tanks, steel—105 bbl. (Per bbl.)	.075	15.75
1 tank, steel—65 bbl. (Per bbl.)	.075	4.87
8 tanks, wood—250 bbl. (Per bbl.)	.125	250.00
389′ casing, steel—15½″	.95	369.55
9406′ casing, steel—8¼″	.275	2586.65
20341′ casing, steel—6 5/8″	.21	4271.61
9208′ casing, steel—5 3/16″	.165	1519.32
24836′ Tubing, steel—2″	.06	1490.16
24836′ Rods, sucker ¾″	.02	496.72
6200′ Pipe, Line—6 5/8″ csg	.15	930.00
16610′ Pipe, Line 2″	.02	332.20
1 Trailer, truck—1½ ton	.....	96.16
Miscellaneous pipe, fittings and other property	.....	1508.31
76 bbls. oil in stock tanks—37.9° gravity	.73	55.48
Total value—Property used in and around producing wells on rest. Indian Lands on which exemption is claimed		$15,869.23

The court further finds that within the time and the manner provided by law, plaintiff rendered to the County Assessor of Payne County, Oklahoma, a list and schedule of the property owned by it, located in Eagle Township, [fol. 178] School District No. 103, Payne County, Oklahoma, on January 1, 1933, which schedule contained an itemized list of the above described property, equipment and improvements, and further recited that the same was claimed to be exempt from ad valorem taxation in said county for the reason that the same was used in the development and operation of the aforesaid oil and gas mining leasehold estate covering said described restricted Indian land in order to produce oil and gas therefrom, and that the plaintiff in the exploration and development of said lease and in the use of said property was acting as a Federal instrumentality.

The court finds that the county assessor of Payne County, Oklahoma, placed all of the above described property, equipment and improvements upon the tax rolls of Payne County, Oklahoma, and assessed the same for taxation for the year 1933, and that the plaintiff paid the taxes levied thereon under protest and filed its petition in this cause to recover said taxes as provided by law.

The court also finds that on January 1, 1933, the above described property, equipment and improvements were located upon said restricted Pawnee Indian Oil and gas mining leasehold and that all of said property, except the one 1½ ton trailer, truck, was being actually used in and around the producing wells upon said described restricted land and in the operation of said oil and gas mining leasehold, and in the production of oil and gas therefrom, and that all of said property, with the exception of said trailer, is a necessary adjunct to the production of oil and gas, [fol. 179] without the use of which plaintiff could not produce oil and gas under the terms of said Departmental oil and gas mining lease.

The court further finds that plaintiff in the exploration and development of said lease and in the production of oil and gas therefrom, and in the placing of said described property, equipment and improvements thereon, with the exception of the trailer above mentioned, and in the use of said property for such purposes was and is operating as a Governmental agency and instrumentality, and that taxa-

tion of the same would constitute a tax upon and interference with the operations of a governmental agency in the performance of its governmental functions.

The court further finds that the one 1½ ton trailer, truck above mentioned is of the value of $96.16 and was not being used exclusively upon said described leasehold, and that the same was subject to taxation for the year 1933, and that the taxes in the amount of $4.10 levied thereon have been legally collected by the defendant herein.

The court further finds that the action of the county assessor of Payne County, Oklahoma, in placing said property on the tax rolls of said county, with the exception of the trailer above mentioned, and assessing the said property for taxation as of January 1, 1933, was without authority of law and the same should be stricken from the tax rolls and the taxes levied upon such property and heretofore paid under protest by the plaintiff to the defendant [fol. 180] herein in the amount of $672.62, have been illegally collected and the defendant should be ordered and directed to immediately refund said amount, together with interest thereon as provided by law, to the plaintiff.

It is therefore, ordered, adjudged and decreed by the court that the plaintiff in the exploration, development and operation of the above described departmental oil and gas mining leasehold covering said described restricted Pawnee Indian land, and in the placing of the said described property, equipment and improvement thereon, except the trailer above mentioned, and in the use of the same is and has been acting as a Governmental Instrumentality, and that said property is a necessary adjunct to the operation of said lease and to the production of oil and gas therefrom, and that taxation of said property would constitute a tax upon and interference with the operations of a governmental agency in the performance of its governmental functions and that the same is not subject to taxation in Payne County, Oklahoma, for the year 1933.

It is further ordered, adjudged and decreed by the court that the action of the county assessor in placing said described property, equipment and improvements, except the trailer above mentioned, upon the tax rolls of said county and assessing the same for taxation for the year 1933 was without authority of law, and that the same should be stricken from said tax rolls.

It is further ordered, adjudged and decreed by the [fol. 181] court that the taxes in the amount of $672.62, levied upon said property, equipment and improvements for the year 1933, and heretofore paid under protest by the plaintiff, were illegally collected by said defendant, and the defendant is hereby ordered and directed to immediately refund said amount, together with interest thereon as provided by law to the plaintiff.

To which judgment of the court the defendant then and there excepted and gave notice in open court of his intention to appeal to the Supreme Court of the State of Oklahoma.

It is, therefore, ordered and decreed that an extension of sixty days from this date be granted to said defendant to make and serve casemade, plaintiff to have ten days thereafter to suggest amendments, same to be settled on five days' notice in writing by either party.

Whereupon, defendant in open court filed his motion for a new trial in this cause, and the court having heard the argument of counsel and being fully advised, and upon consideration thereof finds that said motion for a new trial should be overruled.

It is therefore, ordered, adjudged and decreed, that the motion of the defendant for a new trial should be and the same is hereby overruled, to which ruling of the court defendant then and there excepted and gave notice in open court of his intention to appeal to the Supreme Court of the State of Oklahoma, and said defendant praying an appeal to the Supreme Court and extension of time within which to make and serve casemade, it is therefore ordered that an extension of sixty days from this date be granted [fol. 182] said defendant to make and serve casemade, plaintiff to have ten days thereafter to suggest amendments, and same to be settled upon five days' notice in writing by either party.

Freeman E. Miller, Judge.

O. K. Donald Prentice, attorney for plaintiff Guy L. Horton, attorney for defendant.

[File endorsement omitted.]

[fol. 183] IN DISTRICT COURT OF PAYNE COUNTY

RESOLUTION AUTHORIZING APPEAL—Filed June 2, 1934

Whereas, on the 26th day of April, 1934, the District court of Payne County, State of Oklahoma, following hearing in the case of Indian Territory Illuminating Oil Company, a corporation, plaintiff vs. George W. Tabor, Treasurer of Payne County, Oklahoma, defendant, No. 11774, rendered judgment in favor of said plaintiff and against said defendant, and,

Whereas, said case involves a considerable amount of taxes claimed by the defendant and said cause involves the question of the taxation of a class of property which will continue to exist in this county and upon which the final judication by the Supreme Court of this state is desirable.

Now, be it resolved, by the Board of County Commissioners of Payne County, Oklahoma, that Guy L. Horton, County Attorney, be, and he is hereby authorized and directed to perfect an appeal in said case to the Supreme Court of the State of Oklahoma, and take such steps as are necessary to fully present said case to said court and protect the interests of said county in said appeal.

Witness our hands this 21st day of May, 1934.

Board of County Commissioners, Payne County, Oklahoma, by Geo. Flesner, Chairman; J. M. Graves, T. A. Waller, Members. (Seal.)

Attest: V. A. Doty, County Clerk.

[fols. 184 & 185] I, V. A. Doty, County Clerk in and for said county and state do hereby certify that the foregoing resolution is a true, complete and correct copy of the original of the same on file and of record in my office.

Witness my hand and seal of my office this 2 day of June, A. D. 1934.

V. A. Doty, County Clerk. (Seal.)

[File endorsement omitted.]

[fol. 186] Certificate of Attorneys to case made omitted in printing.

[fol. 187] Service of case made omitted in printing.

[fol. 188] Clerk's certificate to foregoing record omitted in printing.

[fol. 189] Waiver of amendments to case made omitted in printing.

[fols. 190 & 191] Waiver of notice of time and place of settlement omitted in printing.

[fol. 192] [File endorsement omitted]

IN THE DISTRICT COURT OF PAYNE COUNTY, STATE OF OKLAHOMA

[Title omitted]

JUDGE'S CERTIFICATE TO CASE MADE—Filed August 13, 1934

STATE OF OKLAHOMA,
Payne County, ss:

I, the undersigned Judge of the District Court of Payne County, State of Oklahoma, do hereby certify that the foregoing was presented to me as a casemade in the action above entitled; that at the time of the presentation of said casemade to me for settlement and signing, there appeared no one for the plaintiff, and Guy L. Horton, Co. Atty. for the defendant; that there were no suggestions of amendments made to said casemade; and I now settle and sign the same as a true and correct casemade, and direct that it be attested and filed by the clerk of said court.

Witness my hand this 13th day of June, 1934.

Freeman E. Miller, District Judge.

Attest: Earl C. Grindstaff, Court Clerk, by Lillian Houston, Deputy. (Seal of Court Clerk of Payne County, Okla.)

[fol. 193] Certificate of filing omitted in printing.

[fols. 194-203] Motions for extensions of time to file brief, stipulations and orders thereon omitted in printing.

[fol. 204] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 25,794

GEORGE W. TABER, Treasurer of Payne County, Oklahoma, Plaintiff in Error,

vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY, a Corporation, Defendant in Error

OPINION—Filed March 12, 1935

SYLLABUS

1. A judgment holding certain personal property exempt from taxation for a given year because of the nature of the use of such property is not res adjudicate as to the liability of the same property for taxes for a subsequent year where the nature of the use of such property may change from year to year.

2. The lessee of restricted Indian land under a lease for oil and gas development purposes is an agent or instrumentality employed by the federal government for the development and use of such land to explore and produce oil therefrom for the benefit of its Indian wards. 271 U. S. 609, 70 L. Ed. 1112.

3. Personal property actually used by a lessee in the production of oil and gas or either from restricted Indian land is a part of a federal agency or instrumentality.

4. Without Congressional consent no federal agency or instrumentality can be taxed by state authority. 70 L. Ed. 1112.

Error from the District Court of Payne County, State of Okla.

Honorable Freeman E. Miller, Judge

Affirmed

Guy L. Horton, County Attorney, for Plaintiff in Error.

W. B. McGinnis, Fred M. Carter, Archibald Bonds, Donald Prentice, for Defendants in Error.

[fol. 205] RILEY, J.:

This is an appeal by the County Treasurer of Payne County from a judgment rendered in favor of the defendant in an action commenced by it, hereinafter referred to as plaintiff, to recover certain taxes paid under protest.

The principal question is whether the property assessed and upon which the tax was levied is taxable by the State of Oklahoma or its political subdivisions.

There is also a question raised as to whether the remedy of plaintiff, if any it had, was by way of appeal from the County Equalization Board.

The tax levied was for the year 1933, and the plaintiff contends that the question of whether said property was liable for taxes was as to the year 1933, res adjudicata in that *that* the same property, used for the same purpose, had been held exempt from taxes by a judgment of the District Court of Payne County, in an action involving taxes for the years 1931-1932, and that said judgment was not appealed from and necessarily decided the same question as here involved.

The property in question belonged to and was used by plaintiff in the development and operation of a departmental oil and gas lease owned by plaintiff and covering lands of a restricted Pawnee Indian allottee, known as the Wilson-Moore land.

Plaintiff made its return to the County Assessor showing that it had on said land certain equipment such as one pumping unit, one tank, certain casing, tubing, etc., of the total value of $1,078.03, in and around exhausted oil wells, [fol. 206] which it conceded was taxable, and other property on said land consisting of one dwelling, portable, one garage, one tool house, engines, pump, water well equip-

ment, tanks, derricks, casing, tubing, rods, pipelines, and one "trailer truck" of the aggregate value of $15,869.23, claimed to have been used in and around producing wells on restricted Indian Lands, and claimed as exempt from taxation.

Plaintiff alleged in its petition that the County Assessor accepted said list and schedule as rendered and assessed the property for taxation for the year 1933-34, as of the value of $1,078.07, exempting the property listed as being used in and about producing wells.

That thereafter, and without notice to plaintiff, the value of plaintiff's property was increased on the tax rolls to $16,947.29, thus including the property claimed as exempt, and that such increase was not made by the County Board of Equalization; that no notice of such increase was given plaintiff, and it had no knowledge thereof until January, 1934, when the taxes became due and payable, and, as to the property claimed to be exempt, were paid under protest. That at the time plaintiff discovered the increase the Payne County Board of Equalization had long since adjourned, and that plaintiff had no opportunity to appear before said Board and protest the increase, and if denied relief there, to appeal as provided by law.

It was also alleged that on February 24, 1933, the District Court of Payne County rendered a judgment holding [fol. 207] said property exempt from taxation for the year 1932-33, and that said judgment became final, and that there had been no change in the use of same, and that said judgment was res adjudicata as to the attempted assessment thereof for the year 1933-44.

A copy of said judgment was attached to the petition and made a part thereof.

Demurrer to the petition being overruled defendant answered by general denial.

Trial was had upon the issues resulting in a judgement for plaintiff, and defendant appeals.

The trial court, while holding the property exempt under the evidence refused to hold the question res adjudicata.

It may be said that there is conflict in the authorities on this question even where it is conceded that the facts are identical.

But in a case of this kind it is clear that the trial court was correct in its ruling on the question. It must be borne

in mind that the theory of plaintiff was that property owned by it and located on restricted Indian land which had in fact been used in the past in connection with the operation of producing wells, but which were no longer producing oil and gas, was taxable. That is that the derricks and equipment of "abandoned" wells are taxable. It can be readily seen that under the issues joined in this case, the defendant could if the facts warranted have shown that many of the wells had been abandoned and that [fol. 208] the status of the derricks and equipment in and about such wells had been changed in the course of one year. Unless it be conceded that the facts were the same, the rule of res adjudicata would not apply even in those jurisdictions where the rule prevailed.

It is contended that the court erred in holding exempt from taxation that part of plaintiff's property necessary and in fact used in and about the producing wells.

The land from which the oil was produced is restricted Indian land, not located in Osage County, and there could be no gross production tax collected, and plaintiff's property used in connection therewith could not be exempt under the "in lieu" provision of the gross production tax laws of the State.

We are bound by the holding of the Supreme Court of the United States in Gillespie v. State, 257 U. S. 501, 66 L. Ed. 338; Jaybird Mining Co. v. Weir, Co.. Treas., 271 U. S. 609, 70 L. Ed. 1112.

It is generally held that federal instrumentalities are not subject to a state tax. This rule has been recognized since the decision in McCulbch v. Maryland, 4 Wheat. 316, 4 L. Ed. 579.

In the Gillespie case, supra, Gillespie was a lessee of restricted Indian lands. It was sought to enforce a tax on the net income derived by lessee from the sale of his share of oil and gas received under his leases.

In the opinion it is stated:

"It is agreed that the lessee was an instrumentality used by the United States in carrying out duties to the Indians that it had assumed, and that the only question in the case [fol. 209] is whether he is liable to this kind of tax."

After quoting from 240 U. S. 530, the following:

"A tax upon the leases is a tax upon the power to make them, and could be used to destroy the power to make them."

It is said:

"The stop from this to the invalidity of the tax upon income from the leases is not long."

In the Jaybird Mining case, supra, the mining company, had and was operating a mining lease on restricted Indian land. It was therein said:

"The lessee is an agency or instrumentality employed by the government for the development and use of the restricted land and to mine ores therefrom for the benefit of its Indian wards."

And:

"It is elementary that the Federal government in all its activities is independent of state control. This rule is broadly applied. And without Congressional consent no Federal agency or instrumentality can be taxed by state authority."

If the lessee is an instrumentality employed by the government for the development and use of the restricted Indian land, certainly the equipment used by the lessee in so doing is so essentially connected with such agency or instrumentality as to be a part thereof.

This being true such federal agency or instrumentality cannot be taxed by state authority without congressional consent. Such consent has not been given, and the inability of the state to tax same "no matter how reasonable, or how universal and undiscriminating, is well established.

Furthermore Section 6, of the lease provides:

"* * * and all sums due as royalty shall be a lien on [fol. 210] all improvements, tools, movable machinery and all other personal chattels used in operating said property, and upon all of the unsold oil obtained from the land herein leased, as security for payment of said royalty."

The power to tax would carry with it the power to enforce the tax by sale of the property and thus interfere with the lien in favor of the lessor.

The lease also provides:

"* * * the lessee shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lessee, but said buildings and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting the tools, derricks, boilers, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines, and machinery, and the casing of all dry or exhausted wells, which shall remain the property of the lessee and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; * * * ."

Therefore the garage and tool house, and possibly the dwelling, though listed as "portable", when placed upon the premises became the property of the owner of the land as a part of the consideration for the lease, and was not subject to taxation.

It is suggested that the property should be held liable to taxation under the rule announced in Thomas v. Gay, 169 U. S. 264, 42 L. Ed. 740; Wagoner v. Evans, 170 U. S. 588, 42 L. Ed. 1154, and other cases of a similar nature. These cases were doubtless considered in Jaybird Mining Co. v. Weir, supra, since they were cited by Mr. Justice Brandeis in his dissenting opinion.

Thomas v. Gay, supra, and many of the cases cited by defendant herein, were cited by the author of the opinion in Weir v. Jaybird Mining Co., 104 Okla. 271. If ore belong- [fol. 211] ing to the lessee after it had been extracted from the restricted lands in the possession of the lessee and stored in bin, and clearly personal property under the law, was not taxable because the lessee was a federal agency or instrumentality employed by the government for the development and use of restricted Indian land, and for the benefit of its Indian wards, we would be reluctant to hold that its machinery, tolls and other necessary equipment used in the production of the oil would be taxable, although it is said by way of dicta in In Re Skelton, etc., 81 Okla. 134, that the

"plants, mills, smelters and machinery * * * are subject to the same rate of property tax which other property bears." But that case was decided before the Gillespie case, supra, and the Jaybird Mining Co., case, supra.

As we understand the two latter cases they, and particularly the Jaybird Mining Co., case, in effect overrule In Re Skelton, etc., supra.

It is contended that plaintiff herein has not availed itself of the proper remedy in that it should have appeared before the Board of Equalization as provided in Section 12646 O. S. 1931, as amended by Section 6, Ch. 115, S. L. 1933.

The contention is entirely without merit. Plaintiff alleged and the evidence shows that it had no notice whatever of the change in the assessment until long after the first Monday in June, 1933, when by law the sessions of the Equalization Board must close under said Section as amended.

As late as October 25, 1933, the County Assessor of Payne County, by letter, in response to an inquiry from plaintiff, [fol. 212] informed plaintiff that the assessed value of plaintiff's property in the particular township in which the land was located was $1078.03, the exact amount in which it was rendered.

It also appears reasonably certain that the change in the assessment was not made until late in August, 1933, and not then by the Board of Equalization, but by the County Assessor under the direction of the County Attorney. No chance whatever was given plaintiff to present its grievance to the Board of Equalization.

If the County Attorney did as a matter of fact instruct the County Assessor to make the change long after he knew the Board of Equalization had adjourned finally and when he knew the Board could not legally hold a session, he should not be heard to urge the advantage thus sought to be gained.

Judgment affirmed.

McNeill, C. J., Busby, Phelps, Gibson, JJ., Concur.

[File endorsement omitted.]

[fol. 213] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

PETITION FOR REHEARING—Filed March 26, 1935

Comes now the plaintiff in error and respectfully represents and states that on the 12th day of March, 1935, this Honorable Court rendered a certain decree, judgment and opinion, sustaining the judgment rendered in the above styled cause in the District Court of Payne County, and in effect and in fact held that the property employed by a Federal instrumentality is not subject to ad valorem taxation by the State of Oklahoma and its municipal subdivisions.

1. That said decision is in conflict with former decisions of this Honorable Court, which were overlooked by counsel and the Court, which are decisive of the identical question herein determined. In re Gross Production Tax of Wolverine Oil Co., 53 Okla. 24, 154 Pac. 362; In re Protest of Bendelari, Agent, 82, Okla. 97, 198 Pac. 606; Central Coal and Lumber Co. vs. Board of Equalization, 70 Okla. 131, 173 Pac. 442.

2. That said decision is in conflict with the decisions of the Supreme Court of the United States upon the same subject, which decisions were overlooked by this Honorable Court, although called to the attention of the Court by the plaintiff in error, in that the Court failed to distinguish be-
[fol. 214] tween the right of a state to levy a tax upon the instrumentality or means employed by the general government to carry out its powers, and the right of a State to levy a non-discriminatory tax upon the property of an agent employed in the performance of such agency. A tax upon the property of such agent, such as involved in the case at bar, is not an interference with the exercise of any power belonging to the general government, and is prohibited by no constitutional implication.

3. The court further held herein that the property was not subject to taxation by reason of the fact that the lease provided that the royalty payable under the lease "shall be a lien upon all improvements, tools, movable machinery and all other personal chattels used in operating said property," and by reason of the fact that the lease further provided that "the lessee shall not remove thereform any buildings or permanent improvements erected thereon."

In so holding the Court overlooked former controlling decisions of this Court and of the Supreme Court of the United States, wherein the identical question has been determined contrary to the opinion of the Court herein. Central Coal and Lumber Co. vs. Board of Equalization, 70 Okla. 131, 173 Pac. 442; Choctaw, Oklahoma and Gulf R. R. Co. vs. Mackey, 256 U. S. 531, 41 S. Ct. 592, 65 L. ed. 1076; Baltimore Ship Building Company vs. Baltimore, 195 U. S. 375, 25 S. Ct. 50, 49 L. ed. 242.

That plaintiff in error attaches hereto its brief in support of this petition, which brief is hereby referred to and made a part hereof.

[fol. 215] Wherefore, plaintiff in error prays that a rehearing be granted herein by this Honorable Court.

Guy L. Horton, County Attorney, Payne County, Oklahoma. George H. Jennings and L. O. Lytle, Attorneys for Plaintiff in Error.

[File endorsement omitted.]

[fol. 216] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

REHEARING DENIED—April 30th, 1935

25,794

GEORGE TABER

v.

I. T. I. O. COMPANY

Petition for rehearing denied.

[fol. 217] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

APPLICATION FOR LEAVE TO FILE SECOND PETITION FOR REHEARING—Filed May 6, 1935

Comes now the plaintiff in error and respectfully shows that heretofore, to-wit: on the 12th day of March, 1935, a

judgment and decision of this court was rendered affirming the judgment of the District Court of Payne County, in favor of defendant in error and against plaintiff in error; that thereafter and within the time provided by law, the rules of this court, plaintiff in error filed in said cause his petition for re-hearing, which said petition was by the court overruled on the 30th day of April, 1935.

Wherefore, plaintiff in error prays for leave to file his second petition for re-hearing, a copy of which petition is herewith filed and made a part of this application.

Guy Horton, County Attorney, Payne County, Oklahoma. George H. Jennings, L. O. Lytle, Attorneys for Plaintiff in Error.

[fol. 218] I hereby certify that a full, true, and correct copy of the foregoing application for leave to file second petition for rehearing, addressed to Donald Prentiss, attorney of record for defendant in error, at Bartlesville, Oklahoma, was deposited by me in the United States Postoffice at the State Capitol, Oklahoma City, Oklahoma, with postage thereon fully prepaid, this 3rd day of May, 1935.

George H. Jennings, Attorney for Payne County, Oklahoma.

Leave granted to file application.

Edwin R. McNeill, Chief Justice.

[File endorsement omitted.]

[fol. 219] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

SECOND PETITION FOR REHEARING—Filed May 6, 1935.

Comes now George W. Taber, County Treasurer, Payne County, Oklahoma, plaintiff in error in the above entitled cause, and very respectfully petitions the court, by way of second petition for rehearing, that this Honorable court grant a rehearing in the above entitled cause for the following reasons and upon the following grounds, to-wit:

1

That this Honorable Court, in its opinion in said cause, wholly failed to distinguish between the application of a tax upon the franchise, or lease authorizing the conduct of the governmental instrumentality, and the profits and income flowing therefrom, and the simple application of a tax upon the personal property of the governmental agent engaged in the purpose authorized by such instrumentality.

2

That the court in its opinion cited as controlling in the case at bar the case of Jaybird Mining Company v. Weir, [fol. 220] 271 U. S. 609. That said case is not in point with the case at bar for the reason that in such case the court held that the ore or mineral taken from a restricted Indian lease by a government agent was not subject to taxation. The ore was nothing less than the income from said lease which has been repeatedly held not subject to taxation, Gil lespie v. Oklahoma, 257 U. S. 500, Carter v. Phillips, 88 Okla. 202. That in the present case, although the tax is attempted to be levied upon the personal property of the governmental agent, this court, in its opinion, placed it in the category of cases dealing with the attempted taxation of the governmental franchise or lease and income therefrom, Gillespie v. Oklahoma, supra, Carter v. Phillips, supra, I. T. I. O. Company v. Oklahoma, 240 U. S. 522, and ignored cases which are really in fact, exactly in point, which hold that the private, personal property of the governmental agency, as distinguished from the license, lease, franchise, or income therefrom, is taxable. McCulloch v. Maryland, 4 Wheat 316, Thomas v. Gay, 169 U. S. 264, Gromer v. Standard Dredging Company, 224 U. S. 362, Alward v. Johnson, 282 U. S. 509, Susquehanna Power Company v. State Tax Commission, 238 U. S. 291, Union Pacific Railroad Co. v. Peniston, 18 Wallace 5.

The Court's attention is especially directed to the fact that on the 14th day of February, 1935, the Circuit Court of Appeals of the Eighth Circuit decided in case of Wanless Iron Company v. Commissioner of Internal Revenue, 75 Fed. (2nd) 779, which case only officially appeared in print [fol. 221] on April 29, 1935, held in the 4th syllabus, as follows:

"United States may impose tax upon property of agency of state government, although property is used in or has relation to business of agency, where there is only remote influence upon exercise of functions of government, but may not impose tax which imposes direct burden upon exercise of governmental powers."

and in the body of the opinion said:

"While the line of demarcation is often difficult to follow or define, there is a recognized distinction between a nondiscriminatory tax upon the property of an agency of government, although the property is used in or has relation to the business of the agency, where there is only a remote, if any, influence upon the exercise of the functions of government, and a tax which is deemed to impose a direct burden upon the exercise of governmental powers. Willcuts v. Bunn. 282 U. S. 216, 51 S. Ct. 125, 127, 75 L. Ed. 304, 71 A. L. R. 1260; Indian Territory, etc., Oil Co. v. Board of Equalization, 288 U. S. 325, 53 S. Ct. 388, 77 L. Ed. 812; Burnett v. A. T. Jergins Trust, 288 U. S. 508, 53 S. Ct. 439, 440, 77 L. Ed. 925; Denman v. Commissioner (C. C. A. 8) 73 F. (2d) 193."

In addition to the authorities cited, supra, and those cited in the briefs heretofore filed by plaintiff in error, the right of the State of Oklahoma to levy an advalorem tax upon the equipment of a lessee of an oil and gas mining lease covering restricted Indian lands was further recognized by the Congress of the United States in the enactment of the Act of Congress of February 14, 1931 (Act 651 of the 71st Congress) amending Section 3 of the Act of Congress approved May 10, 1928, (Sec. 3, Chap. 517, Vol. 45 U. S. Stat. at L., Section 3594); which amendatory act is as follows:

[fol. 222] "Section 3. That all minerals, including oil and gas, produced on and after April 25, 1931, from restricted allotted lands of members of the Five Civilized Tribes in Oklahoma; or from inherited restricted land of full-blood Indian heirs or devisees of such lands, shall be subject to all state and federal taxes of every kind and character, the same as those produced from lands owned by other citizens of the State of Oklahoma; and the Secretary of the Interior is hereby authorized and directed to cause to be paid, from the individual Indian funds held under his supervision and

control and belonging to the Indian owners of the lands, the tax or taxes so assessed against the royalty interest of the respective Indian owners in such oil, gas and other mineral production; *provided, that nothing in this act shall be construed to impose or provide for double taxation, and in those cases where the machinery or equipment used in producing oil or other minerals on restricted Indian lands are subject to the advalorem tax of the State of Oklahoma for the fiscal year ending June* 30, 1931, *the gross production tax which is in lieu thereof shall not be imposed prior to July* 1, 1931."

The taxability on an advalorem basis of the property involved in this controversy was expressly recognized by this Honorable Court in its recent decision, In re: Texas Company Assessment, 31 Pac. (2nd) 929.

The right of the State of Oklahoma to levy an advalorem tax upon equipment belonging to a lessee and located upon restricted Indian lands was directly in issue in this case, and this Court recognized in its opinion that such property was subject to advalorem taxation by the State of Oklahoma.

This Court said in its Syllabus 1:

"Under the provisions of Section 3, c. 179, Acts of the Third Session of the Seventy-First Congress (approved February 14, 1931, 46 Stat. 1108), oil produced from restricted allotted lands of members of the Five Civilized Tribes is subject to a gross production tax from and after April 26, 1931, and where an ad valorem tax has been paid on the machinery and appliances used for the production of said oil for the tax year of 1930-31, said gross production tax could not be imposed prior to July 1, 1931, and since [fol. 223] the record herein shows that gross production tax was paid on the oil in question from and after July 1, 1931, held, that the machinery and appliances used for the production of said oil were not subject to ad valorem taxation for the tax year of 1931-32, and the county treasurer, at the instance of the tax ferret, was without authority to extend said property on the tax rolls for said year."

Wherefore, for all of the foregoing reasons plaintiff in error respectfully prays that this Honorable Court should grant your plaintiff in error oral argument as to the law

involved herein, and that upon such oral argument should grant your plaintiff in error a re-hearing and reconsideration of this case, in the light of all of the above authorities dealing with the questions involved herein, and, as it is the intention of the plaintiff in error to appeal this case to the Supreme Court of the United States should this, his second petition for re-hearing, be overruled, we request that this Honorable Court stay its mandate in this cause for a sufficient length of time to enable the plaintiff in error to properly lodge its appeal in the Supreme Court of the United States.

Respectfully submitted, Guy Horton, County Attorney of Payne County, Oklahoma. George H. Jennings, L. O. Lytle, Attorneys for Plaintiff in Error.

I hereby certify that a full, true and correct copy of the foregoing instrument, addressed to Donald Prentiss, attorney for the plaintiff in error, at Bartlesville, Oklahoma, was deposited by me in the United States Post-Office in the State Capitol Building in Oklahoma City, with postage thereon fully paid this 3rd day of May, 1935.

George H. Jennings.

Leave granted to file.

Edwin R. McNeill, Chief Justice.

[File endorsement omitted.]

[fol. 224] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

PETITION FOR ORAL ARGUMENT—Filed May 13, 1935

Comes now the plaintiff in error and respectfully shows to Court:

That plaintiff in error has filed herein, with leave of Court, his second petition for re-hearing, and plaintiff in error respectfully requests that oral argument be granted thereon, and in support of his petition for oral argument, appellant says:

That the opinion and judgment rendered herein has expressly held that the property of a Federal agency or instrumentality employed in the performance of such agency is exempt from taxation by the municipal sub-division of government in the State of Oklahoma.

That said opinion has overlooked the former controlling decisions of this Court, and of the Supreme Court upon the same subject, and is in conflict therewith.

Your petitioner further says that after the opinion herein becomes final it will release and exempt from taxation by the municipal sub-divisions of government in this State the [fol. 225] property of all Federal instrumentalities and agencies; that included within such scope is the property of railroads, telegraph companies, telephone companies and carriers of the United States Mail, and other instrumentalities and agencies of like nature.

Your petitioner further says that the question herein presented is of great public importance by reason of the further fact that the sphere of Federal instrumentalities and agencies are being enlarged from time to time, and that many millions of dollars in taxable wealth will be released and exempted from taxation in the State of Oklahoma if the opinion herein becomes final, and for the reasons above assigned this request and petition for oral argument should be by the Court allowed.

Respectfully submitted, Guy Horton, County Attorney, Payne County, Okla. George H. Jennings, L. O. Lytle, Attorneys for Plaintiff in Error.

STATE OF OKLAHOMA,
County of Creek, ss:

I hereby certify that on this 10th day of May, 1935, I, George H. Jennings, deposited in the United States post-office, with postage prepaid, a true and correct copy of the foregoing petition for oral argument, addressed to Donald Prentiss, Legal Department, c/o I. T. I. O. Company, Bartlesville, Oklahoma. Same being mailed from Sapulpa, Oklahoma.

George H. Jennings.

Subscribed and sworn to before me this 10th day of May, 1935. J. V. Frazier, Notary Public. My commission expires Nov. 9, 1937. (Seal.)

[File endorsement omitted.]

[fol. 226] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ORDER SETTING CAUSE—May 14th, 1935

25,794

GEORGE W. TABER, Treasurer,

v.

I. T. I. O. COMPANY

Defendant in error directed to respond to second petition for rehearing within 15 days from this date. Cause set for oral argument on rehearing on June 11, 1935.

[fol. 227] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

RESPONSE OF DEFENDANT IN ERROR TO SECOND PETITION FOR REHEARING OF PLAINTIFF IN ERROR—Filed May 29, 1935

Comes now the defendant in error and for its response to the second petition for rehearing of plaintiff in error states:

1. That it denies each and every material allegation contained in the second petition for rehearing and specifically denies that this Court in its opinion rendered in this case on March 12, 1935, cited as controlling decisions which are not in point with the case at bar, or ignored other decisions which are controlling in this case.

Defendant in error further states that the opinion heretofore rendered in this cause by this Court correctly holds that the property involved is not subject to ad valorem taxation by the State of Oklahoma, or its municipal subdivisions, for the reason the same is being used by defendant in error in its operations as a federal instrumentality and that the authorities relied upon by plaintiff in error in his second petition for rehearing are not in point and have no application to the facts in the case at bar.

[fol. 241] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

PETITION FOR ORDER STAYING ISSUANCE OF MANDATE—Filed May 19, 1936

Comes now the plaintiff in error, and respectfully shows to this Honorable Court that on the 12th day of May, 1936, this Court, by its order and judgment, overruled, and denied the second petition for re-hearing filed in this cause by the plaintiff in error, and affirmed the judgment rendered herein on the 12th day of March, 1935; that it is the intention of the plaintiff in error to appeal this cause to the Supreme Court of the United States and to apply to the Court last mentioned for a writ of certiorari, and that the plaintiff in error desires to have this Court stay its mandate in this cause for a sufficient length of time to enable the plaintiff in error to properly lodge his appeal in the Supreme Court of the United States.

Wherefore, plaintiff in error prays that this Honorable Court make and enter its order herein staying the issuance of its mandate in this cause for a sufficient length of time to enable the plaintiff in error to properly lodge its appeal from the judgment herein in the Supreme Court of the United States.

Leon J. York, County Attorney. George H. Jennings, L. O. Lytle, Attorneys for Plaintiff in Error.

[File endorsement omitted.]

[fol. 242] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER STAYING MANDATE—Filed May 19, 1936

It appearing that an opinion was rendered in the above styled and numbered cause on the 12th day of March, 1935, and thereafter petition for rehearing and second petition for rehearing were overruled by the Court, and it further

appearing that plaintiff in error has filed herein his application for an order staying the issuance of the mandate to enable said plaintiff in error to appeal to the Supreme Court of the United States,

It is therefore ordered that the mandate in this cause be stayed for a period of ninety days from this date to enable the plaintiff in error to perfect an appeal to the Supreme Court of the United States.

Dated May 19th, 1936.

Edwin R. McNeill, Chief Justice.

[File endorsement omitted.]

[fol. 243] Clerk's certificate to foregoing record omitted in printing.

[fol. 244] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1936

The petition herein for a writ of certiorari to the Supreme Court of the State of Oklahoma is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Wherefore, defendant in error prays that the second petition for rehearing of plaintiff in error be denied and overruled.

W. P. McGinnis, Fred M. Carter, Archibald Bonds, Donald Prentice, Attorneys for Defendant in Error.

[File endorsement omitted.]

[fol. 228] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

DISSENTING OPINION ON ORDER DENYING REHEARING—Filed May 12, 1936

WELCH, J.:

I agree with the rule stated in paragraph 4 of the syllabus that, "without congressional consent no federal agency or instrumentality can be taxed by state authority." That the instrumentality itself cannot be taxed is so held by the authorities cited in the majority opinion, and by the more recent case of State of Oklahoma v. Barnsdall Refineries, Inc. et al. decided by the Supreme Court of the United States at the October term 1935, affirming the decision of this court in Barnsdall v. Oklahoma Tax Commission, 171 Okla. 145, 41 Pac. (2d) 918.

But I cannot agree with the rule stated in paragraph 3 of the syllabus that "personal property actually used by the lessee in the production of oil and gas or either from restricted Indian land is a part of a federal agency or instrumentality."

By joining the rules stated in these two paragraphs of the syllabus the majority opinion is made to hold that tan-[fol. 229] gible personal property, otherwise subject to bearing its just portion of the burden of taxation, is rendered non-taxable or exempt from taxation merely because the owner used it in carrying out a contract with the federal government, or a contract or lease in which the government has an interest.

Such holding has never been approved by the Supreme Court of the United States, nor heretofore by this court. Upon the contrary, both courts have declared otherwise and I think we should not now depart therefrom.

In the early case of In re Indian Territory Illuminating Oil Co. 43 Okla. 307, 142 Pac. 997, this court stated the rule to be that the state had the right to tax property in the state, although the owner of the property might use the same in the development of leases on restricted Indian land, and speaking of the company there involved, which is the same company involved in the case at bar, the court said:

"Primarily this company is not a federal agency. It is a corporation for profit, incorporated under the laws of the state of New Jersey, and doing business in the state of Oklahoma, with whom the federal government finds it convenient or profitable to deal in carrying out its policy toward the Osage Tribe of Indians. What the state is attempting to do is to tax the property of this corporation within its borders. This certainly is a proper exercise of the taxing power of the state. In re Assess. W. U. Tel. Co. 35 Okla. 626, 130 Pac. 565. Borrowing the language of Mr. Justice Holmes, in Baltimore Shipbuilding Co. v. Baltimore, 195 U. S. 375, 25 Sup. Ct. 50, 49 L. ed. 242:

'It seems to us extravagant to say that an independent private corporation for gain, created by a state, is exempt for state taxation, either in its corporate person, or its property, because it is employed by the United States even if the work for which it is employed is important and takes much of its time."

[fol. 230] "As the authorities sustaining this view of the case are collected in McAlester-Edwards Coal Co. v. Trapp, 141 Pac. 794, recently handed down, but not yet officially reported, it will be sufficient to refer to that case as controlling on this phase of the case at bar."

In the McAlester-Edwards case referred to it was held that the gross revenue tax imposed on lessees share of coal was not a tax upon the governmental instrumentality.

In the case of In re Skelton Lead & Zonc Co. 81 Okla. 134, 197 Pac. 495, this court considered the taxable status of property owned by the lessee and used in operating under lease upon restricted Indian lands, and it was held in the 15th paragraph of the syllabus that:

"The mills, plants, machinery, equipment, and all other property, being exclusively the private property of the lessee, and having a situs within this state, and not being exempt by law, are subject to state taxation. * * *"

The opinion in that case by Chief Justice Harrison analyzes most of the authorities which I have referred to, and the conclusion there seems to me to be contrary to the majority conclusion here. I think the reasoning in that case is unanswerable, demonstrating as it does the "wide distinction between the taxation of the agency itself and the taxation of private property of the agent." And that opinion states this conclusion in these words:

"A state has power to impose a property tax upon the private property of a federal agent."

In the case of Protest of Bendelari, 82 Okla. 97, 198 Pac. 606, this court in an opinion by Mr. Justice N. E. McNeill, [fol. 231] quoted at length from Union Pac. Railway Co. v. Peniston, 85 U. S. 552, 21 L. ed. 787; Thomas v. Gay, 169 U. S. 264, 42 L. ed. 740; Central Pac. Railway Co. v. California, 162 U. S. 91, 40 L. ed. 903, and Choctaw O. & G. Ry. Co. v. Harrison, 235 U. S. 292, 59 L. ed. 234, observing that the last mentioned opinion recognized the right to tax the tangible property of the lessee upon an ad valorem basis, and held in paragraph two, three and four of the syllabus as follows:

"Section 7302, Revised Laws 1910, provides 'all property in this state, whether real or personal, including the property of corporations, banks, and bankers, except such as is exempt, shall be subject to taxation.'

"No constitutional implications prohibit a state tax upon the property of an agent of the government, merely because it is the property of such agent.

"Although a corporation may be an agent of the United States, the state may levy a property tax upon its property, and, when Congress has not interposed to protect said property from state taxation, said taxation is not obnoxious to that objection."

The majority opinion in the case at bar states:

"We are bound by the holding of the Supreme Court of the United States in Gillispie v. State, 257 U. S. 501, 66

L. ed. 338; Jaybird Mining Co. v. Weir, 271 U. S. 609, 70 L. ed. 1112."

And later in the opinion it is said:

"As we understand the two latter cases, they, and particularly the Jaybird Mining Company case, in effect overrule In re Skelton Lead & Zinc Co., supra."

I do not think these decisions are controlling or applicable, nor that they in effect overrule the Skelton case, 81 Okla. 134, 197 Pac. 495.

[fol. 232] In the Gillispie case there was not involved any ad valorem tax question. There was involved the income tax law.

In the Jaybird Mining Company case there was involved an ad valorem tax, but not upon the private property of the lessee used upon the lease. It was there sought to tax the ore in possession of the lessee which was taken from restricted Indian lands and held by the lessee on the premises on the tax assessment date prior to division between the lessee and the lessor.

Those decisions are authority for the rules therein stated, but neither case deals with or in any manner considers separate private property of the lessee used in connection with or upon the lease, and neither case contains any reasoning or states any rule relative to the taxable status of any such private property. I therefore cannot agree that those decisions are controlling here or that they in effect overrule the Skelton case, supra. Other decisions of the Supreme Court of the United States point directly to a conclusion contrary to the majority opinion as I shall undertake to demonstrate.

The gist of the contention here made is that the property involved is exempt from taxation because, to quote from the brief,

"Taxation thereof would constitute a tax upon, and interference with a governmental agency in the performance of its governmental functions."

But an ad valorem tax on the private property of a contractor or lessee is not a tax on the governmental agency itself, and such private property is taxable though used

by the contractor to carry out his contract or used by the lessee on the premises.

[fol. 233] It was so held in Thomas v. Gay, 169 U. S. 264, 42 L. ed. 740; Watoner v. Evans, 170 U. S. 588, 42 L. ed. 1154; Baltimore Shipbuilding Co. v. Baltimore, 195 U. S. 375, 49 L. ed. 242; Montana Catholic Mission v. Missoula County, 200 U. S. 119, 50 L. ed. 398; Alward v. Johnson, 282 U. S. 509, 75 L. ed. 496, and Gromer v. Standard Dredging Co., 224 U. S. 362, 56 L. ed. 801; and the lessees part of the oil itself, after segregation, was held subject to state taxation in I. T. I. O. v. Board of Equalization of Tulsa County, and Board of County Commissioners of Payne County, 288 U. S. 325, 77 L. ed. 812.

The majority opinion in the case at bar further states:

"It is generally held that federal instrumentalities are not subject to a state tax. This rule has been recognized since the decision in McCulloch v. Maryland, 4 Wheat (U. S.) 316, 4 L. ed. 579."

I agree with that rule, but it seems to me the majority opinion wholly fails to note the distinction between a tax directly upon a federal instrumentality, and an ad valorem tax merely upon the property of the federal agent. The former may not be imposed, while the latter may be, and the distinction between the two is clearly drawn and repeatedly referred to in the decisions of the Supreme Court of the United States.

In McCulloch v. Maryland cited in the majority opinion such distinction is noted by the Chief Justice. And in Union Pacific Ry. Co. v. Peniston, supra, the court said:

"This distinction so clearly drawn in the earlier decisions, between a tax on the property of a governmental agent, and a tax upon the action of such agent, or upon his right to be, has ever since been recognized. All state taxation which does not impair the agent's efficiency in the discharge of his duties to the government has been sustained when challenged, and a tax upon his property generally [fol. 234] has not been regarded as beyond the power of a state to impose."

And in Thomson v. Union Pacific Railroad Co., 76 U. S. 579, 19 L. ed. 792, where upon this point it was said:

"But we think there is a clear distinction between the means employed by the government and the property of

agents employed by the government. Taxation of the agency is taxation of the means; taxation of the property of the agent is not always, or generally, taxation of the means. No one questions that the power to tax all property, business and persons, within their respective limits, is original in the states and has never been surrendered."

And in Susquehanna Power Co. v. State Tax Commission of Maryland, 283 U. S. 291, 75 L. ed. 1042, it is said:

"The distinction has long been taken between a privilege or franchise granted by the government to a private corporation in order to effect some governmental purpose, and the property employed by the grantee in the exercise of the privilege, but for private business advantage. The distinction was pointed out by Chief Justice Marshall in McCulloch v. Maryland, 4 Wheat, 316, 435, 4 L. ed. 579, 608, and in Osborn v. Bank of United States, 9 Wheat, 738, 867, 6 L. ed. 204, 234; see Union P. R. Co. v. Peniston, 18 Wall. 5, 34-37, 21 L. ed. 787, 792-794. It has been followed without departure, and property so owned and used has uniformly been held to be subject to state taxation."

And in I. T. I. O. v. Board of Equalization, 288 U. S. 235, 77 L. ed. 812, it is said:

"There is a recognized distinction between a non-discriminatory tax upon the property of an agent of the government, albeit the property used in, or as relation to, the business of the agency, * * * and a tax which is deemed to impose a direct burden upon exertion of governmental powers."

Other federal decisions noting this distinction are: Osborn v. Bank, 9 Wheat (U. S.) 738, 6 L. ed. 204 (234); First National Bank v. Commonwealth of Kentucky, 76 U. S. 353, 19 L. ed. 701; Union Railroad v. Peniston, 85 U. S. 552, 21 L. ed. 787; New York Lake Erie & W. Rail-[fol. 235] road Co. v. Pennsylvania, 158 U. S. 431, 39 L. ed. 1043; Central Railroad Co. v. State of California, 162 U. S. 91, 40 L. ed. 903; Gromer v. Standard Dredging Co., 224 U. S. 363, 56 L. ed. 801; Choctaw O. & G. R. Co. v. Harrison, 235 U. S. 292, 59 L. ed. 234; Ackerline v. United States, 240 U. S. 531, 60 L. ed. 783; Choctaw O. & G. R. Co.

v. Mackey, 256 U. S. 531, 65 L. ed. 1076; Fort Leavenworth Railroad Co. v. Lowe, 114 U. S. 525, 29 L. ed. 264; Western Union v. Attorney General, 125 U. S. 426, 31 L. ed. 790.

Thus it appears that the United States Supreme Court has noticed this distinction and made forceful reference to it every time the subject-matter has been important, and I insist that this court should likewise observe the distinction.

We should not lose sight of the reason for, and the foundation of the rule that federal agents or instrumentalities are exempt from state taxation. In Union Pacific Railroad Co. v. Peniston, 85 U. S. 552, 21 L. ed. 787, it was said:

"It is, therefore, manifest that exemption of Federal agencies from state taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform."

And in the First National Bank of Louisville v. Commonwealth of Kentucky, 76 U. S. 353, 19 L. ed. 701 (703), after discussing the rule or principle of exempting federal instrumentalities or agents from state legislation and taxation, it was said:

[fol. 236] "The principle we are discussing has its limitation, a limitation growing out of the necessity on which the principle itself is founded. That limitation is, that the agencies of the Federal Government are only exempted from state legislation, so far as that legislation may interfere with, or impair their efficiency in performing the functions by which they are designed to serve that government. Any other rule would convert a principle founded alone in the necessity of securing to the Government of the United States the means of exercising its legitimate powers, into an unauthorized and unjustifiable invasion of the rights of the States."

And in Thomas v. Gay, 169 U. S. 264, 42 L. ed. 740, (744) this expression was used:

"It is not perceived that local taxation, by a State or Territory, of property of others than Indians would be in interference with Congressional Power."

And in Indian Territory Illuminating Oil Co. v. Board of Equalization, 288 U. S. 325, 77 L. ed. 812, (815) dealing with a claim of exemption by the company as oil lessee of Indian lands, this language was used:

"Such immunity as petitioner enjoyed as a governmental instrumentality inhered in its operations as such, and being for the protection of the Government in its function extended no further than was necessary for that purpose."

And in Willcuts v. Bunn, 282 U. S. 216, 75 L. ed. 304, (307) it was said:

"No constitutional implications prohibit a non discriminatory tax upon property of the agent of the government merely because it is the property of such an agent and used in the conduct of the agent's operations and necessary for the agency."

And in Thomson v. Union Pacific Railroad Co., 76 U. S. 579, 19 L. ed. 792, (798) prominence was given to the question whether there had been federal intervention in reference to the questioned tax, and this language was used:

"But it will be safe to conclude, in general, in reference to persons and state corporation employed in government [fol. 237] service, that when Congress has not interposed to protect their property from state taxation, such taxation is not obnoxious to that object."

This quoted principle was expressly reaffirmed in Central Railroad Co. v. State of California, 162 U. S. 91, 40 L. ed. 903.

And in Western Union Telegraph Co. v. Attorney General of the Commonwealth of Massachusetts, 125 U. S. 530, 31 L. ed. 790, it was held as stated in head note three:

"Agencies of the Federal Government are only exempt from state taxation so far as such taxation may interfere

with or impair their efficiency in performing the functions by which they serve the government."

And in Wagoner v. Evans, 170 U. S. 588, 42 L. ed. 1154, where it was contended, as it is contended in the case at bar, that the property tax, if permitted, would interfere with the federal leasing of the Indian lands, the court said that the contention "seems to us too indirect and far-fetched an incident to affect our conclusion."

And in Baltimore Shipbuilding D. & D. Co. v. Baltimore, 195 U. S. 375, 49 L. ed. 242, it was said by Justice Holmes that it seems to the court:

"• • • Extravagant to say that an independent private corporation for gain, created by a state, is exempt from state taxation, either in its corporation person or its property, because it is employed by the United States, even if the work for which it is employed is important and takes much of its time. Thompson v. Union P. R. Co., 9 Wall, 579, 19 L. ed. 792; Union P. R. Co. v. Peniston, 18 Wall, 5, 21 L. ed. 787."

Similar expressions occur in all of the other federal cases cited, and from all of the authorities it seems clear to me that while there is a well-defined exemption of federal instrumentalities or agencies from state taxation, it is [fol. 238] based upon the necessity of preserving the federal instrumentality and its efficiency in aid of the government, and does not extend any further than that which is necessary to preserve the agency or instrumentality and keep its efficiency unimpaired, and that state taxation which does not impair such efficiency is always upheld and that a mere ad valorem tax upon tangible property is quite generally upheld both by this court and the Supreme Court of the United States.

I, therefore, must conclude that a reasonable ad valorem tax on such property is fully sustained by the decided cases. There is nothing whatever in the record to indicate that the payment of this small ad valorem tax would in any manner impair the efficiency of the Indian Territory Illuminating Oil Company in acting as lessee of Indian oil lands, or in any manner interfere with the policy and practice of the Government in leasing lands for oil development.

The majority opinion infers that the property here involved might be sold as under a tax lien, but that I take it is mere error of expression, for no lien exists against personal property for the tax thereon, as does exist against real estate by statute.

The majority opinion refers to that portion of the lease preventing removal of improvements, and in effect making them the property of the lessor. It seems that this court is committed to the rule that such provision would not exempt any of the property here involved from taxation while held and controlled by the lessee during the life of the lease.

[fol. 239] In Central Coal & Lumber v. Board of Equalizatio- of Leflore County, 70 Okla. 131, 173 Pac. 442, it was held in paragraph two of the syllabus:

"Improvements placed upon Indian land not subject to taxation, under the terms of a lease expiring at a specific time, which provides that such improvements should not be removed, but remain upon and become the property of the lessor as a part of the consideration for the lease, but gives the lessee control and ownership during the life of the lease, and personal property and subject to taxation until the lease expires."

I, therefore, cannot concur in the majority opinion, and respectfully dissent.

I am, authorized to say that Mr. Justice Bayless and Mr. Justice Corn concur in this dissent.

[File endorsement omitted.]

[fol. 240] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ORDER DENYING REHEARING—May 12, 1936

25,794

GEORGE W. TABER, County Treasurer,

v.

I. T. I. O. COMPANY.

Petition for rehearing denied. Osborn, V. C. J., Bayless, Welch and Corn, JJ., dissent.

FILE COPY

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CHARLES ELMORE CRO
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 280

GEORGE W. TABER, Treasurer of Payne County, Oklahoma,

Petitioner,

vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY, a Corporation.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA AND BRIEF IN SUPPORT THEREOF.

Guy L. Horton,
Stillwater, Oklahoma;
L. O. Lytle,
Sapulpa, Oklahoma,
Counsel for Petitioner.
Leon J. York,
County Attorney of Payne County, Oklahoma;
Geo. H. Jennings,
Sapulpa, Oklahoma,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 280

GEORGE W. TABER, TREASURER OF PAYNE COUNTY, OKLAHOMA,

Petitioner,

vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY, A CORPORATION.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Supreme Court of the United States of America:

Your petitioner above named respectfully states that this cause was instituted in the District Court of Payne County, State of Oklahoma, on the 2nd day of March, 1934, against George W. Taber, Treasurer of Payne County, Oklahoma, for the recovery of certain taxes paid under protest by the respondent, Indian Territory Illuminating Oil Company, a corporation. In its petition, respondent claimed that it was the owner of an oil and gas lease duly approved by the Department of the Interior, on allotted lands belonging to Restricted Pawnee Indians, which land is located in Payne County, Oklahoma, and that in the development of

said lease, respondent had placed thereon certain oil field equipment composed of derricks, machinery, casing and other equipment which was used in drilling for and the production of oil and gas on said lease. That respondent was acting as a Federal instrumentality and agent in the operation and development of said lease and that such drilling equipment and machinery used in connection therewith was exempt from State taxation on the grounds that it became a part of the instrumentality.

That answering such petition, your petitioner took the position that such tax was the application of a uniform nondiscriminatory tax upon the personal property of such agent as distinguished from a tax upon the instrumentality itself, and further, is too remote and indirect to impede or hamper the instrumentality and is therefore authorized.

On the 26th day of April, 1934, the District Court of Payne County, Oklahoma, decreed that respondent was a Federal agent or instrumentality and that the tax sought to be imposed was a tax on a Federal agency and would interfere with the operation of a governmental function.

That on the 12th day of March, 1935, the Supreme Court of the State of Oklahoma, pursuant to an appeal from such judgment and decree of the District Court of Payne County, Oklahoma aforesaid (which appeal was docketed as George W. Taber, Treasurer of Payne County, Oklahoma, Plaintiff in Error *vs.* Indian Territory Illuminating Oil Company, a corporation, defendant in error, No. 25794), affirmed the judgment and decree of the District Court of Payne County, Oklahoma.

That thereafter, and within the time allowed by the rules of the Supreme Court of the State of Oklahoma this petitioner filed a petition for rehearing, and that thereafter, and on the 30th day of April, 1935, said petition for rehearing was by the Supreme Court of the State of Oklahoma denied.

That thereafter, on May 6, 1935, and within the time permitted by the Rules of the Supreme Court of the State of Oklahoma, this petitioner filed an application for leave to file a second petition for rehearing in said cause, and on the 6th day of May, 1935, permission was granted to file said second petition for rehearing in said cause, the same being filed May 6, 1935.

That on the 12th day of May, 1936, the Supreme Court of the State of Oklahoma denied petitioners second petition for rehearing, and readopted its opinion.

That on the 19th day of May, 1936, and within the time allowed by the rules of the Supreme Court of the State of Oklahoma, your petitioner filed a petition for an order staying the issuance of the mandate for sufficient time to enable petitioner to appeal to the Supreme Court of the United States, and on May 19, 1936, an order staying the mandate for a period of 90 days was made to enable this petitioner to effect an appeal to the Supreme Court of the United States, a certified copy of the entire record of such cause is hereby furnished, attached to and made a part of this petition, and for identification marked Exhibit "A".

Your petitioner states that he has exhausted every legal remedy available in the Supreme Court of the State of Oklahoma to protect his rights and has no other court to which he may appeal for his rights, save to the Supreme Court of the United States.

Upon review of the proceedings in the trial court the Supreme Court of the State of Oklahoma decided:

> "Lessee of restricted Indian land under lease for oil and gas development is instrumentality of federal government, and personal property actually used by lessee in producing oil and gas is exempt from state taxation as part of federal agency or instrumentality."

Your petitioner believes and therefore asserts that the final decision of the Supreme Court of the State of Okla-

homa, the highest court of the State, was against the rights, privileges and immunities of your petitioner under the Constitution and the Statutes of the United States in the following particular: That said court failed to distinguish between a uniform non-discriminatory tax upon the personal property of a Federal agent used in the operation of said agency or instrumentality and a direct tax upon the instrumentality itself.

Your petitioner states that the instant case involved an important Federal question which has not been directly determined by this Honorable Court, but should be passed on by this Honorable Court.

Your petitioner states that the Supreme Court of the State of Oklahoma has decided the Federal question herein involved in conflict with the applicable decisions of this Honorable Court (said cases being cited by supporting brief herein) and in conflict with the applicable decisions of the Supreme Court of the State of Oklahoma, and has denied the validity of the taxing statutes of the State of Oklahoma.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of, and under the seal of this Court, directed to the Supreme Court of the State of Oklahoma, commanding said court to certify and send to this Court on a day certain, to be therein designated, a full and complete transcript of the record and all proceedings of the Supreme Court of the State of Oklahoma in this case which is entitled in that court: "In the Supreme Court of the State of Oklahoma, George W. Taber, Treasurer of Payne County, Oklahoma, plaintiff in error, *vs.* Indian Territory Illuminating Oil Company, a corporation, defendant in error, No. 25794," to the end that said cause may be reviewed and determined by this Court as provided by law, and that your petitioner may have such other and further

relief or remedy in the premises as to this Court may seem appropriate, and that said judgment of the Supreme Court of Oklahoma be reversed by this Honorable Court.

GUY L. HORTON AND
L. O. LYTLE,
Counsel for Petitioner.
LEON J. YORK,
County Attorney of Payne County,
State of Oklahoma.
GEO. JENNINGS,
Of Counsel for Petitioner.

STATE OF OKLAHOMA,
County of Payne, ss:

Guy L. Horton, of lawful age, being duly sworn, says that he is one of the counsel for the petitioner herein, and of counsel and attorney for Petitioner herein, in the foregoing petition for Writ of Certiorari addressed to this Honorable Court, and has had personal charge of the prosecution of this cause; that he prepared and has read said petition and know the contents thereof and that the statements and allegations therein made are true to the best of his knowledge, information and belief.

GUY L. HORTON.

Subscribed and sworn to before me this 21st day of July, 1936.

[SEAL.] MINNIE NESTER,
Notary Public.

My Commission expires November 17, 1938.

SUPPORTING BRIEF.

The opinion of the Supreme Court of the State of Oklahoma is not yet officially reported, but is found in 57 Pac. (2d) 1167. The judgment of the Court was finally rendered May 12, 1936, on petition for rehearing.

Your petitioner states that its specific objections to the judgment of the Supreme Court of the State of Oklahoma are as follows: The Court, in its opinion in the second syllabus, says:

> "Lessee of restricted Indian Land under lease for oil and gas development is instrumentality of federal government, and personal property actually used by lessee in producing oil and gas is exempt from state taxation as part of federal agency or instrumentality."

The Supreme Court of the State of Oklahoma found that *Gillespie* v. *State of Oklahoma,* 257 U. S. 501, 42 S. Ct. 171, 172, 66 L. Ed. 338; *Jaybird Mining Co.* v. *Weir, County Treasurer,* 271 U. S. 609, 46 S. Ct. 592, 593, 70 L. Ed. 1112, furnished a precedent for the decision in the case at bar; this your petitioner denies, and says and alleges that an examination of the above mentioned decisions will show that the same are not applicable here. Your petitioner here expressly relies in support of the proposition above named on *Susquehanna Power Company* v. *State Tax Commission of Maryland,* 75 L. Ed. 1042, 283 U. S. 291; *Alward* v. *Johnson,* 75 L. Ed. 496, 282 U. S. 509; *McCulloch* v. *Maryland,* 4 Wheat. 316, 436 4 L. Ed. 579.

Your petitioner says that respondent is not primarily a Federal agent. It is a corporation for profit, incorporated under the laws of the State of New Jersey, doing business in the State of Oklahoma, and is a person with whom the

Federal Government has found it convenient or profitable to deal in carrying out its policy towards the Pawnee Tribe of Indians, and in this case what the State is attempting to do is tax the property of this corporation within its boundaries, and we say this is a proper exercise of the taxing powers of the State.

In the very earliest case of this Honorable Court touching this question, a non-discriminatory tax on the property of an agent was held not to be in violation of the taxing power of the State; *McCulloch* v. *Maryland,* 4 Wheat. 316, 4 L. Ed. 579. Other Federal cases making the distinction found in *McCulloch* v. *Maryland, supra,* are: *Thomas* v. *Gay,* 169 U. S. 264, 18 S. Ct. 340, 42 L. Ed. 740; *Wagoner* v. *Evans,* 170 U. S. 588, 18 S. Ct. 730, 42 L. Ed. 1154; *Baltimore Shipbuilding Co.* v. *Baltimore,* 195 U. S. 375, 25 S. Ct. 50, 49 L. Ed. 242; *Montana Catholic Missions* v. *Missoula County,* 200 U. S. 119, 26 S. Ct. 197, 50 L. Ed. 398; *Alward* v. *Johnson,* 282 U. S. 509, 51 S. Ct. 273, 75 L. Ed. 496, 75 A. L. R. 9; and *Gromer* v. *Standard Dredging Co.,* 224 U. S. 362, 32 S. Ct. 499, 56 L. Ed. 801; *Indian Territory Illuminating Oil Company* v. *Board of Equalization of Tulsa County;* (*Indian Territory Illuminating Oil Company* v. *Board of County Commissioners of Payne County*), 288 U. S. 325, 53 S. Ct. 388, 77 L. Ed. 812. Also, in this connection see *Thompson* v. *Union Pacific Railroad Co.,* 9 Wall. (76 U. S.) 579, 591, 19 L. Ed. 792; *Susquehanna Power Co.* v. *State Tax Commission of Maryland,* 283 U. S. 291, 51 S. Ct. 434, 435, 75 L. Ed. 1042; *Osborn* v. *Bank of United States,* 9 Wheat. 738, 6 L. Ed. 204, 234; *First National Bank* v. *Commonwealth of Kentucky,* 9 Wall. (76 U. S.) 353, 19 L. Ed. 701; *Union Pac. Railroad Co.* v. *Peniston,* 18 Wall. (85 U. S.) 5, 21 L. Ed. 787; *New York, Lake Erie & W. Railroad Co.* v. *Pennsylvania,* 158 U. S. 431, 15 S. Ct. 896, 39 L. Ed. 1043; *Central Railroad Co.* v. *State of California,* 162 U. S. 91, 16 S. Ct. 766, 40 L. Ed. 903; *Gromer* v.

Standard Dredging Co., 224 U. S. 362, 363, 32 S. Ct. 499, 56 L. Ed. 801; *Choctaw, O. & G. R. Co.* v. *Harrison*, 235 U. S. 292, 35 S. Ct. 27, 59 L. Ed. 234; *Ackerlind* v. *United States*, 240 U. S. 531, 36 S. Ct. 438, 60 L. Ed. 783; *Choctaw, O. & G. R. Co.* v. *Mackey*, 256 U. S. 531, 41 S. Ct. 582, 65 L. Ed. 1076; *Fort Leavenworth Railroad Co.* v. *Railroad Co.* v. *Lowe*, 114 U. S. 525, 5 S. Ct. 995, 29 L. Ed. 264; *Western Union Tel. Co.* v. *Attorney General*, 125 U. S. 530, 8 S. Ct. 961, 31 L. Ed. 790.

We, therefore, respectfully submit this cause to this Honorable Court for its consideration.

GUY L. HORTON,
L. O. LYTLE,
Counsel for Petitioner.
GEO. H. JENNINGS,
LEON J. YORK,
County Attorney of Payne County Oklahoma,
Of Counsel.

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No. 280

In the Supreme Court of the United States

October Term, 1936.

GEORGE W. TABER, TREASURER OF PAYNE COUNTY, OKLAHOMA, *Petitioner,*

vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY, A CORPORATION, *Respondent.*

BRIEF OF PETITIONER.

GUY L. HORTON,
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Counsel for Petitioner.

LEON J. YORK,
County Attorney of Payne County,
State of Oklahoma;
GEO. JENNINGS,
Of Counsel for Petitioner.

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IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1936.

No. 280

GEORGE W. TABER, TREASURER OF PAYNE COUNTY, OKLAHOMA, *Petitioner,*

vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY, A CORPORATION, *Respondent.*

BRIEF *of* PETITIONER.

I.

The Opinion of the Court Below.

The opinion of the court below (the highest court of the state) is not officially reported, but appears as *Taber, County Treasurer,* v. *Indian Territory Illuminating Oil Co.,* in 57 Pac. Rep. (2nd Series) 1167. The opinion is dated March 12, 1935, and is copied in full in the record. (R. 97)

II.

Jurisdiction.

1. The statutory provision believed to sustain the jurisdiction is section 237 (b) of the Judicial Code, as amend-

ed by the Act of February 13, 1925, 43 Stat. L. 937 (Sec. 344, U. S. C. A.) (Appendix I), which reads in part as follows:

> "It shall be competent for the Supreme Court, by *certiorari*, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a state in which a decision could be had where there is drawn in question the validity of a treaty or statute of the United States; or where there is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the federal claim is sustained as where it is denied * * *."

2. The date of the judgment to be reviewed is March 12, 1935 (R. 90), pursuant to the opinion of the court filed the same day. (R. 90) A petition for a rehearing was filed March 26, 1935 (R. 104), which was denied April 30, 1935. (R. 105) Application for leave to file second petition for rehearing was filed May 6, 1935 (R. 105), which was granted May 6, 1935. (R. 106) Second petition for rehearing was filed May 6, 1935 (R. 106), which was denied May 12, 1936. (R. 122) On May 19, 1936, on application of petitioner, the Supreme Court of the State of Oklahoma issued its order staying mandate in this cause for a period of ninety days to enable petitioner to perfect an appeal to the Supreme Court of the United States. (R. 123) The

transcript of the record of the Supreme Court of the State of Oklahoma, including all the appeal papers, was lodged in the office of the clerk of this court within the time allowed by law and the writ of *certiorari* was granted by this court October 12, 1936.

3. The nature of the case and the ruling below are as follows:

The question concerns the right of the State of Oklahoma, and its municipal subdivisions, to levy an ad valorem tax on personal property consisting of derricks, engines and other oil field drilling equipment owned and used by respondent for exploring for and producing oil and gas from allotted lands belonging to restricted Pawnee Indians in Payne County, Oklahoma, upon which respondent holds a departmental oil and gas mining lease (R. 30) pursuant to the provisions of the Act of Congress approved March 3, 1909 (35 Stat. L. 783) (Appendix II), and the regulations approved by the Secretary of the Interior, September 3, 1912.

The respondent is a private corporation organized for profit and engaged in the production of oil and gas. On January 1, 1933, being the time when the taxable status of property for ad valorem purposes was fixed and determined for said year as provided by section 12581, Oklahoma Statutes 1931 (Appendix III), it was the owner of an oil and gas mining lease, duly approved by the Department of the Interior (R. 30), upon certain allotted lands of restricted Pawnee Indians in Payne County, Oklahoma. That at such time respondent was engaged in producing oil and gas from the leased premises, and owned certain personal property used in its operations consisting of derricks, en-

gines and other oil field equipment, commonly used in such business.

Within the time provided by law, section 12605, Oklahoma Statutes 1931 (Appendix IV), the respondent delivered to the Assessor of Payne County, Oklahoma, a statement in writing disclosing the nature and value of the personal property owned by it in said county for ad valorem tax assessment purposes for the year 1933. (R. 8) This statement contained, in addition to other property of respondent, a schedule of the personal property consisting of the said derricks, engines and other oil field equipment, located upon the restricted Pawnee Indian allotment in question, with the claim that the same was exempt from taxation by the State of Oklahoma on the ground that respondent, by its operations on said allotment, was acting as a federal instrumentality and was actually using the equipment for that purpose.

The county assessor and other taxing authorities of Payne County, Oklahoma, took the position that the respondent was a private corporation organized for profit; that it was not primarily a federal agent or instrumentality; that the taxation of its personal property used upon the leasehold in question amounted to the taxation of the private property of said agent or instrumentality as distinguished from a direct tax upon the instrumentality or agency itself, and that therefore said personal property was subject to taxation under the general taxing statutes of the State of Oklahoma, chapter 66, article 3, Oklahoma Statutes 1931, and particularly section 12317, Oklahoma Statutes 1931 (Appendix V), and placed the property upon the tax rolls of said county. Respondent, thereupon, and

as provided by section 12665, Oklahoma Statutes 1931 (Appendix VI), paid taxes upon the disputed property in the sum of $676.72, under protest (R. 14), and on March 2, 1934 instituted suit in the District Court of Payne County, Oklahoma, to recover the same. (R. 3)

In its petition filed in the said District Court of Payne County, Oklahoma (R. 3), as well as at all stages of this case, respondent urged its property involved was exempt from taxation on the ground that due to its operations it was acting as a federal agency or instrumentality.

The said District Court upon regular hearing April 26, 1934, sustained the claim of the respondent, with the exception of one item of the personal property in question, and directed the petitioner to refund to respondent the sum of $672.62 of the taxes so paid. (R. 90)

From such judgment the petitioner herein, as further provided by the laws of the state, appealed to the Supreme Court of the State of Oklahoma.

The Supreme Court of the State of Oklahoma, upon hearing rendered its final decision on May 12, 1936, denying the contention of petitioner and rendering judgment that said personal property was not subject to taxation for said year. In the second paragraph of the syllabus of the opinion of the Supreme Court of the State of Oklahoma in said case (R. 97) it was stated:

> "The lessee of restricted Indian land under a lease for oil and gas development purposes is an agent or instrumentality employed by the Federal Government for the development and use of such land to explore and produce oil therefrom for the benefit of its Indian wards."
>
> —271 U. S. 609, 70 L. ed. 1112.

The third paragraph of the syllabus:

> "Personal property actually used by the lessee in the production of oil and gas, or either, from restricted Indian land, is a part of a federal agency or instrumentality."

The fourth paragraph of the syllabus:

> "Without congressional consent no federal agency or instrumentality can be taxed by state authority."
>
> —70 L. ed. 1112.

The Supreme Court of the State of Oklahoma is the highest court of said state in which a decision of the suit can be had, and its decision and judgment aforesaid is final.

4. It is respectfully submitted that although the validity of the state statutes under which the tax was imposed was not drawn in question in their entirety, the jurisdiction to review by *certiorari* is conferred by that portion of section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. L. 937 (section 344, U. S. C. A.), which reads as follows:

> "Or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution or any treaty or statute of, or commission held or authority exercised under the United States; and the power to review under this paragraph may be exercised as well where the federal claim is sustained as where it is denied."

The Supreme Court of the State of Oklahoma has decided a federal question of substance in a way not in accord with applicable decisions of this honorable court (see Rule 35, paragraph 5, subdivision A, 28 U. S. C. A., page 424).

In the following cases involving claims of immunity from state taxation on federal grounds it was held that review may be had by *certiorari:*

Citizens National Bank of Cincinnati v. *Durr,* 257 U. S. 220;

Indian Territory Illuminating Oil Co. v. *Board of Equalization of Tulsa County, Oklahoma; (Indian Territory Illuminating Oil Co.* v. *Board of County Commissioners of Payne County, Oklahoma,* 288 U. S. 325, 53 S. Ct. 388, 77 L. ed. 812).

III.

Statement of the Case.

The case having been rather fully stated in paragraph 3 under the heading "Jurisdiction," we shall not burden the brief by an extensive repetition.

The claim that the oil field equipment in question was exempt from taxation was made at the time the respondent filed its listing for ad valorem tax purposes with the county assessor. (R. 8)

The case was tried in the state District Court wherein the same claim of exemption was made and allowed, the court finding the property exempt and the tax thereon amounting to the taxation of a governmental instrumentality. (R. 90)

The petitioner appealed to the Supreme Court of the State of Oklahoma, where the judgment of the District Court was affirmed. (R. 97)

VI.

Specification of Errors.

1. That the Supreme Court of the State of Oklahoma has decided a federal question of substance not in accord with applicable decisions of said court and the applicable decisions of this honorable court.

2. The Supreme Court of the State of Oklahoma erred in affirming the judgment of the District Court of Payne County, Oklahoma, and in holding and deciding that the property in question was not subject to ad valorem taxation for the year 1933 by the State of Oklahoma or any political subdivision thereof.

3. The Supreme Court of the State of Oklahoma erred in refusing to reverse the judgment of the District Court of Payne County, Oklahoma.

4. The Supreme Court of the State of Oklahoma erred in holding, deciding and determining that section 12317, Oklahoma Statutes 1931 (Appendix IV), and section 12605, Oklahoma Statutes 1931 (Appendix III), which provided for the assessment, levy and collection by the State of Oklahoma and political subdivisions thereof of an ad valorem tax on all property situated in the State of Oklahoma during any given tax year, are not valid when applied to oil field equipment used for the drilling for and production of oil and gas from the allotted lands of a restricted Pawnee Indian in Payne County, Oklahoma, by a lessee under an oil and gas mining lease executed by such restricted Indian, duly approved by the Secretary of the Interior, and in holding such taxation is repugnant to the Constitution, treaties and laws of the United States.

5. The Supreme Court of the State of Oklahoma erred in failing to sustain the above mentioned statutes of the State of Oklahoma authorizing the assessment, levy and collection of ad valorem tax on the property involved in this case.

6. The Supreme Court of the State of Oklahoma erred in its decision that the said property was exempt from ad valorem taxation.

7. The Supreme Court of the State of Oklahoma erred in holding and deciding that a lessee of restricted Indian land under lease for oil and gas development is an instrumentality of the federal government, and that personal property actually used by lessee in producing oil and gas is exempt from state taxation as part of the federal agency or instrumentality.

8. The Supreme Court of the State of Oklahoma erred in that said court failed to distinguish between a uniform non-discriminatory tax upon the personal property of a federal agent used in the operation of said agency or instrumentality and a direct tax upon the instrumentality itself.

ARGUMENT.

POINT ONE.

The tax sought to be applied in this case is not upon a federal instrumentality or agency, but is a uniform non-discriminatory tax upon the personal property of such agent, and is therefore authorized.

—*McCulloch* v. *Maryland,* 4 Wheat. 316, 4 L. ed. 579;

Union Pac. Railroad Co. v. *Peniston,* 18 Wall. (85 U. S.) 5, 21 L. ed. 787;

Wagoner v. *Evans,* 170 U. S. 588, 18 S. Ct. 730, 42 L. ed. 1154;

Thomas v. *Gay,* 169 U. S. 264, 18 S. Ct. 340, 42 L. ed. 740;

Alward v. *Johnson,* 282 U. S. 509, 75 L. ed. 496;

Susquehanna Power Co. v. *State Tax Commission of Maryland,* 283 U. S. 291, 75 L. ed. 1042;

Indian Territory Illuminating Oil Co. v. *Board of Equalization,* 288 U. S. 325, 53 S. Ct. 388, 77 L. ed. 812.

COMMENT:

There is a decided distinction between a tax directly upon a federal instrumentality and an ad valorem tax merely upon the property of the federal agent. The former may not be imposed, while the latter may be, and the distinction between the two is clearly drawn and repeatedly referred to in the decisions of this court. For instance, the oil and gas mining lease, or franchise, of respondent, is certainly not subject to taxation, *Indian Territory Illuminating Oil Company* v. *Oklahoma,* 240 U. S. 522, 60 L. ed. 799, nor those benefits directly flowing therefrom, *Jaybird Mining Co.* v.

Weir, 271 U. S. 609; *Gillespie* v. *Oklahoma,* 257 U. S. 501; but the individual property of an agent, so engaged, as is involved in this case, has been repeatedly held to be subject to taxation.

In the case of *Union Pacific Railroad Co.* v. *Peniston,* 18 Wall. (85 U. S.) 5, 21 L. ed. 787, it was said:

> "It is, therefore, manifest that exemption of federal agencies from state taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform."

To the same effect is the language of the court in the case of *Susquehanna Power Co.* v. *State Tax Commission of Maryland,* 283 U. S. 291, 51 S. Ct. 434, 75 L. ed. 1042, a case decided within recent years:

> "The distinction has long been taken between a privilege or franchise granted by the government to a private corporation in order to effect some governmental purpose, and the property employed by the grantee in the exercise of the privilege, but for private business advantage. The distinction was pointed out by Chief Justice MARSHALL in *McCulloch* v. *Maryland,* 4 Wheat. 316, 436, 4 L. ed. 579 (608), and in *Osborn* v. *Bank of United States,* 9 Wheat. 738, 867, 6 L. ed. 204 (234); see *Union P. R. Co.* v. *Peniston,* 18 Wall. 5, 34-37, 21 L. ed. 787 (792-794). It has been followed without departure, and property so owned and used has uniformly been held to be subject to state taxation."

In one of the latest cases dealing directly with restricted Indians and federal agencies, wherein the agent sought to have exempted from state ad valorem taxation its share of oil from the leasehold, previously segregated from the Indian's share, *Indian Territory Illuminating Oil Co.* v. *Board of Equalization*, 288 U. S. 325, 53 S. Ct. 388, 77 L. ed. 812, it was said:

> "There is a recognized distinction between a non-discriminatory tax upon the property of an agent of government, albeit the property used in, or in relation to, the business of the agency, * * * and a tax which is deemed to impose a direct burden upon the exertion of governmental powers."

We respectfully suggest this court has by its many decisions on this question definitely held that the class of property involved in this case is subject to taxation.

POINT TWO.

The tax sought to be imposed upon the agent's property in this case would not hinder or retard its operations, but would affect them only remotely.

—*Alward* v. *Johnson*, 282 U. S. 509, 75 L. ed. 496;

Thomas v. *Gay*, 169 U. S. 264, 18 S. Ct. 730, 42 L. ed. 740;

Wagoner v. *Evans*, 170 U. S. 588, 18 S. Ct. 730, 42 L. ed. 1154.

COMMENT:

It has been held that exemption of federal agencies from state taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax;

that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power, *Union Pac. R. R. Co.* v. *Peniston,* 18 Wall. (85 U. S.) 5, 21 L. ed. 787; *Western Union Telegraph Co.* v. *Attorney General of the Commonwealth of Massachusetts,* 125 U. S. 530, 8 S. Ct. 961, 31 L. ed. 1154.

The tax sought to be imposed in this case would in no way impede or hamper respondent. It is uniform and nondiscriminatory and in no way greater than that paid by others engaged in similar operations. The amount of the tax is negligible. To require respondent to pay taxes in this case would be no more of an impediment to its operations than were the taxes imposed upon the private property of the agents in the cases heretofore mentioned. Most surely there is nothing in the record indicating the taxes would hinder respondent's operations.

In the case of *Thomas* v. *Gay,* 169 U. S. 264, 42 L. ed. 740, this court upheld a state tax upon the cattle of the lessee of Indian grazing leases. It was said in that case:

> "The taxes in question here were not imposed on the business of grazing, or on the rents received by the Indians, but on the cattle as property of the lessee and as we have heretofore said that such a tax is too remote and indirect to be deemed a tax or burden on interstate commerce, so it is too remote and indirect to be regarded as an interference with the legislative assembly of Congress."

In the case of *Wagoner* v. *Evans,* 170 U. S. 588, 18 S. Ct. 730, 42 L. ed. 740, the same question was involved as was considered in *Thomas* v. *Gay, supra,* and the court said:

> "It is, indeed, contended that to permit the territory to tax the cattle would tend to discourage the making of such leases, and thus deprive the Indians of the advantages coming to them. This seems to us too indirect and far-fetched an incident to affect our conclusions."

In the case of *Alward* v. *Johnson,* 282 U. S. 509, 75 L. ed. 496, a claim of exemption from taxation was made by the owner of an automotive transportation business who carried the United States mail by reason of a contract entered into with the post office department. In considering the claim of exemption, the court stated:

> "Nor do we think petitioner's property was entitled to exemption from state taxation because used in connection with the transportation of the mails. There was no tax upon the contract for such carriage; the burden laid upon the property employed affected operations of the Federal Government only remotely."

We respectfully submit to the court that the cases of *Thomas* v. *Gay* and *Wagoner* v. *Evans, supra,* are analogous to the case at bar and are similar in fact to the present case, with the exception that in this case the lessee is engaged in producing oil from the leasehold, and in those cases the lessee was using the leases for cattle grazing purposes. In the three cases the ultimate benefit to the Indians depended upon the operations of the lessees, and the taxation of the property of respondent used in the development of the lease in the present case would not be dissimilar to the taxation of the lessee's cattle in the former cases.

It has been suggested in this case that certain provisions of the lease give the Indians specific rights which might be affected by the imposition of a tax. The provision

stressed was a part of section 6 of the lease (R. 35) which gives the lessor a lien upon all the improvements, equipment, etc., for unpaid royalty. Such a provision may be of some importance, but its importance and possible benefit is greatly minimized by the fact the lease also provides that lessee, before the lease shall be in force and effect, shall furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, conditioned for the performance of the lease. (Section 10 of lease.) (R. 36) This should fully protect the lessor from the lessee's failure to pay the royalty owed, as well as a breach of any other of the terms of the lease. At least the chance for the Indian to lose his royalty because of the possible loss of his security, becomes more remote.

It has also been said in this case that the rights conferred upon the Indian by that portion of the lease preventing removal of improvements by respondent, and in effect making them the property of the lessor (section 5 of lease) (R. 34) might be affected by the taxation of the personal property involved. This possibility is, indeed, remote. In the first place, the section referred to permits the respondents to remove the tools, derricks, boilers, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells, which cover all of the property involved in this case with one or two minor exceptions. (R. 8) Further, as a matter of law, it has been held that such a possibility as was advanced is not a sufficient reason to deny the application of taxes. This court, in the case of *Choctaw, Oklahoma and Gulf Railroad Company* v. *Mackey,* 256 U. S. 331, 41 S. Ct. 592, 65 L. ed. 1076, sustained a special improvement tax

against the property of the railroad company, an admitted federal instrumentality, although under its grant there was a possible reverter to the Creek Nation. In *Baltimore Ship Building and Dry Dock Co.* v. *Baltimore,* 195 U. S. 375, 25 S. Ct. 50, 49 L. ed. 242, it was held that the real and personal property of the dry dock company was subject to taxation by the state, although the property in question had been conveyed to the company by the government under a grant which provided that the government should have free use of the dock forever, and further provided that if it should ever be conveyed or become unfit for such purpose it should revert to and become the absolute property of the United States.

POINT THREE.

The tax prohibited has been defined to be upon the license, franchise, lease or contract of the federal agent, or some benefit directly flowing therefrom, and such immunity has never been extended to include the tangible property of the agent employed in the exercise of the privilege.

—*Thomas* v. *Gay,* 169 U. S. 264, 18 S. Ct. 340, 42 L. ed. 740;

Alward v. *Johnson,* 282 U. S. 509, 75 L. ed. 496;

Susquehanna Power Co. v. *State Tax Commission of Maryland,* 283 U. S. 291, 75 L. ed. 1042;

Federal Compress & Warehouse Co. v. *McLean,* 291 U. S. 17, 54 S. Ct. 267.

COMMENT:

In each of the above cases the court, in sustaining a tax upon the private property of a federal agency, stressed the fact that the license, franchise, lease or contract, as was involved in the individual case, was not sought to be taxed.

Point Four.

The cases relied upon by respondent to establish its claim to exemption are not in point and are not controlling in this case.

COMMENT:

The respondent has relied for its exemption in this case principally upon three cases, decisions of this court. They are, *Indian Territory Illuminating Oil Co.* v. *State of Oklahoma,* 240 U. S. 522, 60 L. ed 779, wherein an oil and gas mining lease, such as is involved here, was held exempt from taxation; *Gillespie* v. *State of Oklahoma,* 257 U. S. 501, 42 S. Ct. 171, 66 L. ed. 338, wherein the net income from an oil and gas mining lease upon restricted Indian land, was held exempt, and the case of *Jaybird Mining Co.* v. *Weir,* 271 U. S. 609, 46 S. Ct. 592, 70 L. ed. 1112, in which ore stored in bins on lands of restricted Indians held by the mining company by virtue of a mining lease, was held exempt from taxation. In the latter case the Indian's share of the ore had not been segregated, and the tax sought to be imposed was in addition to a gross production tax paid to the state auditor.

It is not difficult to distinguish these cases and the case at bar. They are different in principle and fact. This case does not involve an attempt to tax the lease of respondent, or the income therefrom. Neither is it an attempt to tax oil produced from the lease prior to its removal therefrom and prior to the segregation or payment of the Indian's share. We respectfully suggest that while the ore involved in the case of *Jaybird Mining Co.* v. *Weir* could be considered gross or unconverted income, thus bringing the

case within the rule announced in the case of *Gillespie* v. *State,* it is not unlikely the court gave serious consideration to the fact that the Indian's share of ore had not been segregated nor paid and that a gross production tax previously had been paid thereon. We do not believe the case is authority for the exemption of an agent's individual personal property used in its activities as such agent. In the case of *Indian Territory Illuminating Oil Co.* v. *Board of Equalization,* 288 U. S. 325, 53 S. Ct. 388, 77 L. ed. 812, the oil involved therein was produced under the same authority and under like circumstances as was the ore in the *Jaybird Mining Company* case, but in the former, the agent had by its acts, definitely reduced the oil to the status of becoming its individual personal property, and hence was held to be subject to the taxation.

We respectfully submit to the court that the cases relied on by respondent are authority for the rules therein stated, but not one of them deals with, or in any manner considers, separate private property of the lessee used in connection with or upon the lease, and not one of the cases contains any reasoning or states any rule relative to the taxable status of any such private property; that although giving the cases relied on by respondent the broadest possible interpretation in its favor, one must nevertheless conclude these cases do not support respondent's claim because the tax sought to be imposed is not upon the lease, agency or instrumentality, or upon any benefit directly associated therewith, but upon its individual personal property, and as such is authorized by the consistent holdings of this court.

Conclusion.

We, therefore, respectfully submit that petitioner's petition for writ of *certiorari* was properly granted and that the decision of the Supreme Court of the State of Oklahoma should be reversed.

Respectfully submitted,

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L. O. LYTLE,
Counsel for Petitioner.

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Of Counsel for Petitioner.

APPENDIX.

Relevant Statutes.

I.

Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. L. 937 (section 344, U. S. C. A.):

> "It shall be competent for the Supreme Court, by *certiorari*, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a state in which a decision could be had where there is drawn in question the validity of a treaty or statute of the United States; or where there is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States; or where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to grant a review on *certiorari* under this paragraph."

II.

Act of March 3, 1909 (35 Stat. L. 783):

> "*Leases of Allotted Lands for Mining Purposes.*

All lands allotted to Indians in severalty, except allotments made to members of the Five Civilized Tribes and Osage Indians in Oklahoma may by said allottee be leased for mining purposes for any term of years as may be deemed advisable by the Secretary of the Interior; and the Secretary of the Interior is authorized to perform any and all acts and make such rules and regulations as may be necessary for the purpose of carrying the provisions of this paragraph into full force and effect."

III.

Section 12581, Oklahoma Statutes 1931:

"All taxable property shall be listed and assessed each year at its fair cash value, estimated at the price it would bring at a fair voluntary sale, in the name of the owner thereof on the first day of January of each year, as soon as practicable on or after the fifteenth day of January, including all property owned on the first day of January of that year, and in case of stocks of goods, wares and merchandise the statement shall include the average amount of the same for the preceding year ending January first, *provided,* that when the owner of any personal property resides in a township and the property is located in any city or town, then the property shall be assessed in the township where the owner resides, and *provided further,* that real property shall be listed and assessed only once in every two years beginning in the year 1915 continuing every two years thereafter. If any real estate shall become taxable during the time between the period for assessing real estate, the county assessor shall assess same for taxation and place the same upon the tax rolls, or when any improvements of buildings of value are placed upon real estate after the date of the biennial assessment the value of such real estate as increased by said improvements, shall be added by the county assessor to the assessed valuation for the

next ensuing year; and in case the improvements on real estate are destroyed by fire or other cause, or in case the value of land being impaired, damaged or destroyed on account of floods or overflow of streams in the State of Oklahoma, then the County Board of Equalization, or in case the damage occurs subsequent to the adjournment of said board, then the Board of County Commissioners in which said damage or destruction has occurred, shall estimate the amount of depreciation in value for said year and shall make an order directing the assessment of said property at the fair cash value thereof, taking into account the damage occasioned by fire, floods or other causes."

IV.

Section 12605, Oklahoma Statutes 1931:

"Every person, firm, company, or association, their lessees, trustees or receivers, owning, operating or controlling any oil or gas well or any property of any kind used by or for the purpose of producing, pumping, distributing or storing crude oil or natural gas as herein defined, except public service corporations, shall on the first day of March of each year, or within thirty days thereafter, make out and deliver to the township assessor of the municipal township in which said well is situated, a statement in writing verified by the oath of the officer, agent or employee of any such person, firm, company, corporation or association, their lessees, trustees, or receivers having knowledge of the facts set forth in separate entries, the following, to-wit:

First. The name or number of each well, and a description of the land upon which the same is situated, including number of land.

Second. The name or names of the owner or owners thereof.

Third. A statement of all piping, casing, tubing, and give the number of feet of each, including the pip-

ing of owner of the lease together with a separate account of any such property belonging to any other person, firm, company, corporation or association, trustees, or receivers located on such lands. Said statement shall include all pipe buried and on the grounds and pipe along the section lines of said lease.

Fourth. A statement of the number and sizes of all boilers and boiler houses, the number of gas and steam engines, and pumps, including water, oil and gas pumps, giving their sizes and conditions.

Fifth. The number of feet of sucker rods and all other rods used on lease. The number of derricks, the material in and about tool-houses, the number of teams and wagons. The number and size of all wooden and steel tanks, and the number thereof and name of owner thereof, and the amount of oil in all wooden, steel or earthen tanks.

Sixth. The amount of lumber used in casing tanks and for other purposes, and any and all buildings used in connection with the production of any such oil or gas. Said statement shall include any other improvements and machinery, such as drilling rigs, sand lines, cables, and all appurtenances used in connection with oil or gas wells, said statement shall include the value of each article named, at what it would bring at a fair voluntary sale."

V.

Section 12317, Oklahoma Statutes 1931:

"All property in this state, whether real or personal, including the property of corporations, banks and bankers, except such as is exempt, shall be subject to taxation; *provided,* that no farm products while remaining in the raw state, such as cotton, corn, wheat, oats and the like, shall be subject to ad valorem tax, but be subject to the income tax laws of the state."

VI.

Section 12665, Oklahoma Statutes 1931:

"In all cases where the illegality of the tax is alleged to arise by reason of some action from which the laws provide no appeal, the aggrieved person shall pay the full amount of the taxes at the time and in the manner provided by law, and shall give notice to the officer collecting the taxes showing the grounds of complaint and that suit will be brought against for recovery of them. It shall be the duty of such collecting officer to hold such taxes separate and apart from all other taxes collected by him, for a period of thirty days and if within such time summons shall be served upon such officer in a suit for recovery of such taxes, the officer shall further hold such taxes until the final determination of such suit. All such suits shall be brought in the court having jurisdiction thereof, and they shall have precedence therein; if, upon final determination of any such suit, the court shall determine that the taxes were illegally collected, as not being due the state, county or subdivision of the county, the court shall render judgment showing the correct and legal amount of taxes due by such person, and shall issue such order in accordance with the court's findings, and if such order shows that the taxes so paid are in excess of the legal and correct amount due, the collecting officer shall pay to such person the excess and shall take his receipt therefor."

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IN THE SUPREME COURT OF THE UNITED STATES.
October Term, 1936.

No. 280

GEORGE W. TABER, TREASURER OF PAYNE COUNTY, OKLAHOMA, *Petitioner,*

vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY, A CORPORATION, *Respondent.*

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF *CERTIORARI.*

Statement of the Case.

Petitioner's brief in support of the petition for writ of *certiorari* does not contain a statement of the case and certain important and material facts involved in the case are not included in the petition for writ of *certiorari.*

Respondent became the owner by assignment of a departmental oil and gas mining lease, duly approved by the Secretary of Interior, covering certain restricted Pawnee Indian land situated in Payne County, Oklahoma. (R. 30-41) Under the terms of the lease respondent was required

to pay to the United States officer having jurisdiction over the leased premises for the benefit of the Indian lessors, as royalty, the sum of 12½ per cent of the gross proceeds of all crude oil extracted from the land, and also to furnish the Indian lessors free gas for domestic purposes, provided there be surplus gas produced from the premises. (Section 2, lease, R. 31-32.)

Respondent was also required under the terms of the lease to grant a lien on all improvements, tools, machinery, and all other personal chattels used in operating the leasehold as security for the payment of the royalty. (Section 6, lease, R. 35.)

The lease further provided that any buildings or permanent improvements erected on the leasehold by lessee should become the property of the owner of the land as a part of the consideration for the lease. (Section 5, lease, R. 34.)

The leasehold was developed for oil and gas and a number of producing wells were drilled thereon. (R. 24) Certain oil field equipment, consisting of derricks, casing, tanks, and other equipment, was placed on the leasehold by the respondent for use in connection with the producing wells located thereon. (R. 12) It was necessary to use all of this equipment in order to produce oil and gas from the leasehold, and the equipment was actually being used for that purpose on January 1, 1933, being the time when the taxable status of property for ad valorem purposes was fixed and determined for said year as provided by section 12581, Oklahoma Statutes 1931. (R. 44-45)

An ad valorem tax was levied on said equipment and respondent instituted this action in the District Court of

Payne County, Oklahoma, asserting that the equipment was exempt from taxation by the State of Oklahoma for the reason respondent was operating the leasehold as a federal instrumentality and was actually using the equipment for that purpose. (R. 7) On April 26, 1934, the District Court of Payne County, Oklahoma, adjudged and decreed that respondent was operating said leasehold on January 1, 1933, as a federal instrumentality, and as the equipment was being actually used in and around producing wells located thereon and was necessary to be used to produce oil and gas therefrom, that taxation thereof would constitute a tax upon and interference with the operations of a federal instrumentality in the performance of its governmental functions. (R. 90-94)

The cause was appealed to the Supreme Court of Oklahoma, and on March 12, 1935, said court affirmed the judgment of the District Court of Payne County, Oklahoma, deciding that respondent, as lessee of restricted Indian land under a lease for oil and gas development purposes, was an agent or instrumentality employed by the federal government for the development and use of such land to explore and produce oil therefrom for the benefit of its Indian wards, and the equipment used by respondent in so doing was so essentially connected with such agency or instrumentality as to be a part thereof, and such agency or instrumentality cannot be taxed by state authority without congressional consent. (R. 97-103)

ARGUMENT.

Petitioner contends that the decision of the Supreme Court of Oklahoma is in conflict with applicable decisions of this court and violates the rights, privileges and immunities of petitioner under the Constitution and statutes of the United States in that it fails to distinguish between a tax upon the personal property of a federal agent or instrumentality used in the operation of the agency and a direct tax upon the instrumentality itself.

We submit that the opinion of the Supreme Court of Oklahoma is fundamentally sound and correct and that the contention of petitioner is without merit, and his petition for writ of *certiorari* should be denied for the following reasons:

POINT ONE.

Respondent, as lessee of restricted Indian land under lease for oil and gas development purposes, is an agent or instrumentality employed by the federal government for the development and use of such land to explore and produce oil and gas therefrom for the benefit of its Indian wards.

—*Jaybird Mining Company* v. *Weir*, 271 U. S. 609;
Gillespie v. *Oklahoma*, 257 U. S. 500;
Choctaw O. & G. R. Company v. *Harrison*, 235 U. S. 292.

POINT TWO.

The states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control or affect, the operation of constitutional laws enacted by Congress for the purpose of carrying into execution the powers vest-

ed in the United States government, and cannot by taxation interfere with the instrumentalities of the federal government, nor the means employed by Congress to carry into effect the powers conferred by the Federal Constitution; and any such tax, no matter how reasonable, or how universal and undiscriminating, is repugnant to the Constitution of the United States.

—*M'Culloch* v. *Maryland,* 4 Wheat. 316;
California v. *Central P. R. Company,* 127 U. S. 292;
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Gillespie v. *Oklahoma,* 257 U. S. 501;
Jaybird Mining Company v. *Weir,* 271 U. S. 609.

In *Johnson* v. *Maryland,* 254 U. S. 51, this court said:

"With regard to taxation, no matter how reasonable, or how universal or undiscriminating, the state's inability to interfere has been regarded as established since *M'Culloch* v. *Maryland,* 4 Wheat. 316, 4 L. ed. 579. The decision in that case was not put upon any consideration of degree, but upon the entire absence of power on the part of the states to touch, in that way, at least, the instrumentalities of the United States (4 Wheat. 429, 430), and that is the law today."

Point Three.

Agencies and instrumentalities employed by the federal government and property used by them to explore and produce oil and gas from restricted Indian land for the benefit of its Indian wards are not subject to taxation by state authorities without congressional consent.

—*Shaw* v. *Gibson-Zahniser Oil Corporation,* 276 U. S. 575;
Jaybird Mining Company v. *Weir,* 271 U. S. 609.

In *Shaw* v. *Gibson-Zahniser Oil Corporation*, 276 U. S. 575, this court said:

> "What governmental instrumentalities will be held free from state taxation, though Congress has not expressly so provided, cannot be determined apart from the purpose and character of the legislation creating them. *Metcalf* v. *Mitchell*, 269 U. S. 514, 70 L. ed. 384, 46 Sup. Ct. Rep. 172. The end sought and the mode of attaining it adopted by Congress in the legislation providing for the welfare of the Indians by setting apart, by allotment or otherwise, tribal lands or the public domain, restricted for their benefit, led to the conclusion that those lands and the uses of them were so intimately connected with the performance of governmental functions as clearly to require independence of all state control so complete that nothing short of an express declaration by Congress would have subjected them to state taxation."

It is apparent from the above decisions that this court has heretofore determined that the purpose and character of legislation creating governmental agencies to explore and produce oil and gas from restricted Indian land for the benefit of the Indian wards of the government is such that in the absence of permissive Acts of Congress neither the leases, nor the exploitation of the land by the lessee, nor the agent's income from the lease, nor the products produced from the land, may be taxed by state authority. We submit that such agencies and the property used by them to produce oil and gas from Indian land are not subject to state taxation in any form in the absence of an express declaration by Congress. Congress has never subjected equipment used by a governmental agency in producing oil and gas from restricted Pawnee Indian land to state taxation, and, therefore, the State of Oklahoma is without

authority to levy an ad valorem tax on the equipment used by respondent to produce oil and gas from its restricted Pawnee Indian leasehold.

POINT FOUR.

Agencies and instrumentalities employed by the federal government to develop Indian land and produce oil and gas therefrom for the benefit of its Indian wards are of such nature and so intimately connected with the necessary functions of government, that any taxation of them by the states would be such a direct interference with the functions of government itself, as to be plainly beyond the taxing power of the states.

—*Metcalf* v. *Mitchell*, 269 U. S. 514;
Gillespie v. *Oklahoma*, 257 U. S. 501;
Choctaw O. & G. R. Company v. *Harrison*, 235 U. S. 292;
Jaybird Mining Company v. *Weir*, 271 U. S. 609;
Indian Territory Illuminating Oil Company v. *Oklahoma*, 240 U. S. 522;
Large Oil Company v. *Howard*, 248 U. S. 549;
Howard v. *Gypsy Oil Company*, 247 U. S. 503.

This court in the case of *Metcalf* v. *Mitchell*, 269 U. S. 514, after announcing the rule that while in one aspect the extent of the exemption must finally depend upon the effect of the tax upon the functions of the government alleged to be affected by it, still the nature of the agencies and the mode of their constitution may not be disregarded in passing on the question of tax exemption; for it is obvious that an agency may be of such a character or so intimately connected with the exercise of a power or the performance of a duty by the one government, that any taxation of it by

the other would be such a direct interference with the functions of government itself as to be plainly beyond the taxing power, said:

> "It is on this principle that, as we have seen, any taxation by one government of the salary of an officer of the other, or the public securities of the other, or an agency created and controlled by the other, exclusively to enable it to perform a governmental function *(Gillespie* v. *Oklahoma, supra)* is prohibited."

The case of *Gillespie* v. *Oklahoma*, 257 U. S. 501, referred to in *Metcalf* v. *Mitchell, supra,* cannot be distinguished in principle from the case at bar. The questions of law and the essential facts involved in that case and in this case are identical.

Both cases involve *(a)* oil and gas mining leases covering restricted Indian land, duly approved by the Secretary of the Interior under rules and regulations prescribed by him under authority of an Act of Congress; *(b)* leases granted by the government for the purpose of securing the development of restricted Indian land and a percentage of the oil (or its value) produced therefrom for the benefit of the Indian wards of the government; *(c)* leases operated under the supervision of the Interior Department and requiring the Indians' royalty to be accounted for to the Secretary of the Interior, or his agent (see lease, sections 2, 4 and 6, R. 30), and *(d)* agencies or instrumentalities created and controlled by the federal government, exclusively to enable it to perform a governmental function in fulfilling its duty to its Indian wards.

The nature of the agencies, their mode of constitution, and the purpose of the government in creating them, are identical in both cases. The agency in the case at bar is of

the same character and as intimately connected with the exercise of a power and the performance of a duty by the federal government as in the *Gillespie* case, *supra*, and, therefore, any taxation of it by the State of Oklahoma would result in direct interference with the functions of government itself, and is prohibited.

The only difference in the cases is that the *Gillespie* case involved a tax assessed under the Oklahoma Income Tax Law upon the net income derived by a lessee of restricted Creek and Osage Indian land from sales of his share of oil and gas received under his lease, while this case involves an ad valorem tax assessed under the Oklahoma law upon equipment actually and necessarily used by respondent to produce oil and gas from restricted Pawnee Indian land.

This difference does not afford ground for distinguishing the cases in principle. In a number of cases involving identical or similar governmental agencies the State of Oklahoma heretofore attempted to tax *(a)* leases covering restricted Indian land *(Indian Territory Illuminating Oil Company* v. *Oklahoma,* 240 U. S. 522); *(b)* the gross receipts from the total production of coal produced from Indian land *(Choctaw O. & G. R. Company* v. *Harrison,* 235 U. S. 292); *(c)* the gross value of the production of oil and gas less the Indians' royalty interest under leases made for the benefit of the Indians *(Large Oil Company* v. *Howard,* 248 U. S. 549; *Howard* v. *Gypsy Oil Company,* 247 U. S. 503); *(d)* the net income derived by lessee from the sale of his share of oil and gas produced from leases covering restricted Indian land *(Gillespie* v. *Oklahoma,* 257 U. S. 501); and *(e)* on an ad valorem basis ore in the possession

of a lessee produced from restricted Indian land under a departmental lease (*Jaybird Mining Company* v. *Weir*, 271 U. S. 609).

In each of the above mentioned cases the tax was condemned as an attempt to tax an instrumentality used by the United States in fulfilling its duty to the Indians. These cases when construed in connection with *Metcalf* v. *Mitchell, supra,* clearly show that the exemption from state taxation of a federal instrumentality employed by the government to develop Indian land for the benefit of its Indian wards, does not depend upon the character or kind of the property of the instrumentality sought to be taxed, which is the only difference between the *Gillespie* case and the case at bar.

The taxes prohibited in the cases of *Gillespie* v. *Oklahoma, Large Oil Company* v. *Howard,* and *Howard* v. *Gypsy Oil Company, supra,* involved only the net income of the lessees and their share of the oil and gas produced. (See *Jaybird Mining Company* v. *Weir,* 271 U. S. 609.) The Indian wards of the government had no interest in the property sought to be taxed in those cases, while in the case at bar the equipment is being used not only to produce profit for the instrumentality, but also to produce an income for the Indian wards. If the net income of the lessee and its share of the oil and gas produced are not taxable because the lessee is a federal instrumentality employed by the government for the development and use of restricted Indian land for the benefit of its Indian wards, certainly the equipment used by the lessee in so doing is so essentially connected with such agency or instrumentality as to be a part thereof and cannot be taxed by state authority without congressional consent.

Point Five.

An ad valorem tax by the State of Oklahoma upon equipment used to produce oil and gas by an instrumentality employed by the federal government to develop Indian land would retard, impede and burden the government in a greater degree and in a more direct manner than would a tax on the net income of the instrumentality.

—*Gillespie* v. *Oklahoma*, 257 U. S. 501;
U. S. Glue Company v. *Oak Creek*, 247 U. S. 321.

It is manifest that an ad valorem tax upon the equipment used by a federal instrumentality employed by the government to produce oil and gas from Indian land may be more burdensome than a tax on the net income received by the instrumentality from the sales of oil and gas produced from the land.

A tax upon the net income does not arise at all unless a profit is shown over and above all proper development costs, depletion allowances, depreciation, expenses and losses, and the tax cannot be heavy unless the profits are large. It is an indirect charge upon the business affected and has been allowed by this court in cases arising from the conduct of interstate commerce on the theory that at the most it is only a remote burden on such commerce. *(U. S. Glue Company* v. *Oak Creek, supra.)*

The burden of an ad valorem tax is more substantial and direct than a tax on the net income. It is laid irrespective of whether the equipment is being used to produce a profit or otherwise, and may be extended to such limits that oil and gas could only be produced at an actual loss, thus forcing the instrumentality to abandon the wells to the detriment of the Indian wards of the government.

It is obvious that an ad valorem tax imposed upon the equipment employed by the instrumentality must be paid from the net income of the instrumentality, and diminishes its net income as would a tax imposed upon the net income itself. Thus, such a tax would result indirectly in imposing a tax upon the net income of the instrumentality, which was prohibited by this court in *Gillespie* v. *Oklahoma, supra.*

We submit that it is clear that the effect of an ad valorem tax on the equipment is more direct than a tax on the net income condemned in the *Gillespie* case.

POINT SIX.

If the State of Oklahoma has the power to levy an ad valorem tax on equipment used by a federal instrumentality to produce oil and gas from restricted Indian land it also has the power to enforce the tax by sale of the equipment, thereby depriving the instrumentality of the power to serve the government as it was intended to serve it and interfering with the government in the exercise of its governmental functions to secure the development of Indian land and an income therefrom for its Indian wards.

—Section 12727, Oklahoma Statutes 1931;
Northern Pacific Railroad Company v. *Rockne,* 115 U. S. 600.

The equipment is used for the benefit of the Indian wards of the government as well as for the benefit of the lessee. The usual forms of departmental leases in general use covering restricted Indian land provide for the payment of a royalty and furnishing of free gas for domestic purposes to the Indian lessors, and for a lien upon the equipment used by the lessee as security for the payment of the royalty. (See lease, R. 30-41.)

If the State of Oklahoma has the power to levy an ad valorem tax on the equipment it also has the power to sell the equipment in case the tax is not paid. Section 12727, Oklahoma Statutes 1931, provides in part as follows:

> "* * * and within thirty days after such taxes on personal property shall become delinquent under the provisions of this article, the county treasurer shall issue warrants under his hand, directed to the sheriff, commanding such sheriff to levy the amount of such unpaid taxes, and the interest thereon, and the cost of advertising together with his lawful fees for collecting the same on chattels belonging to the person to whom such taxes were assessed, and on collecting the same to pay the amount collected into the county treasury, and to make returns of such warrants within sixty days thereafter. The sheriff on receipt of such a warrant, shall levy the same upon the property of the taxpayer and sell the same in manner and form as provided for the sale of personal property on execution, and shall be entitled to the same fees therefor as are provided by law for like sales on execution. * * *"

It is obvious that the right to operate the restricted Indian leasehold could not, by virtue of the state's taxing powers, be taken from the instrumentality and conferred upon the purchaser of the equipment at the tax sale. If the equipment was levied upon and sold for unpaid ad valorem taxes the purchaser thereof would have no right or authority to leave the equipment on the restricted Indian land, or to use it to operate the wells, and would be required to pull the casing from the wells, dismantle the derricks, and remove the equipment from the leasehold.

It is evident, therefore, that a sale of the equipment for taxes by the State of Oklahoma would result in totally destroying the producing wells, thereby defeating the pur-

pose of the government to provide a royalty income and gas for the benefit of its Indian wards, and depriving the lessee of the power to serve the government as it was intended to serve it. This would result in such direct interference with the functions of government as to be plainly beyond the power of the state.

The State of Oklahoma certainly could not sell the equipment and confer title thereto by tax sale free from the lien impressed thereon under the departmental lease. It follows, therefore, that the state is without power to tax the equipment, as a valid sale for taxes, being the highest exercise of sovereign power of the state, must carry title to the property sold paramount to all others, and if the sale does not confer such a title, it is because there exists no authority to make it. *(Northern Pacific Railroad Company* v. *Rockne*, 115 U. S. 600.)

Conclusion.

We, therefore, respectfully submit that the contention of petitioner is without merit and his petition for writ of *certiorari* should be denied.

Respectfully submitted,

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No. 280

In the Supreme Court of the United States

October Term, 1936.

GEORGE W. TABER, TREASURER OF PAYNE COUNTY, OKLAHOMA, *Petitioner,*

vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY, A CORPORATION, *Respondent.*

BRIEF OF RESPONDENT.

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vs.

INDIAN TERRITORY ILLUMINATING OIL COMPANY, A CORPORATION, *Respondent.*

BRIEF *of* RESPONDENT.

Respondent adopts its brief in opposition to petition for writ of *certiorari,* as herein supplemented, as its answer brief to the petitioner's brief on the merits.

ARGUMENT.

As we understand them, the petitioner's contentions are *(1)* that the decisions of this court referred to in his brief establish the rule that the immunity of a federal instrumentality from state taxation cannot under any circumstances be extended to personal property used by the instrumental-

ity in its operations regardless of the nature of the instrumentality, the mode of its constitution, or of the fact that it was created and controlled by the federal government exclusively to enable it to perform a governmental function, and *(2)* that the tax sought to be imposed in this case is too remote and indirect to be deemed a burden upon the instrumentality, or upon the exercise of the functions of government.

In answer to these contentions we submit—

Point One.

The application of the doctrine of implied immunity of a federal instrumentality from state taxation should have regard to the circumstances disclosed, and while in one aspect the extent of the exemption depends upon the effect of the tax, still the nature of the instrumentality and the mode of its constitution may not be disregarded, for it may be of such a character that any taxation of it would impose a direct burden upon the functions of government.

—*Metcalf* v. *Mitchell,* 269 U. S. 514;
Union Pac. R. R. Co. v. *Peniston,* 18 Wall. (85 U. S.) 5;
Safe Deposit and T. Co. v. *Virginia,* 280 U. S. 83;
Wright v. *Nagle,* 101 U. S. 791.

Comment:

In the case of *Metcalf* v. *Mitchell,* 269 U. S. 514, it was said:

> "While it is evident that in one aspect the extent of the exemption must finally depend upon the effect of the tax upon the functions of the government alleged to be affected by it, still the nature of the governmental agencies or the mode of their constitution may not

be disregarded in passing on the question of tax exemption; for it is obvious that an agency may be of such a character or so intimately connected with the exercise of a power or the performance of a duty by the one government, that any taxation of it by the other would be of such a direct interference with the functions of government itself as to be plainly beyond the taxing power.

"It is on this principle that, as we have seen, any taxation by one government of the salary of an officer of the other, or the public securities of the other, or an agency created and controlled by the other, exclusively to enable it to perform a governmental function *(Gillespie* v. *Oklahoma, supra)* is prohibited."

The petitioner refers to the case of *Union Pac. R. R. Co.* v. *Peniston,* and suggests that the contrary rule announced therein to the effect that the exemption of federal agencies from state taxation is dependent not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but solely upon the effect of the tax, is controlling in the case at bar.

The general statements in that opinion which conflict with the conclusions reached in the later case of *Metcalf* v. *Mitchell* must be limited and confined to the precise situation there under consideration *(Safe Deposit and T. Co.* v. *Virginia,* 280 U. S. 83).

The *Peniston* case was decided in the year of 1873, and the opinion clearly shows that the court in announcing its views did not consider an instrumentality created and controlled by the government to produce oil and gas from restricted Indian lands. In fact, so far as we have been able to discover, that decision was rendered many years before the government undertook to secure the development of re-

stricted Indian lands for oil and gas by creating governmental instrumentalities for that purpose. That decision should not be extended beyond the question actually under consideration for any purpose of authority in another and different case. (*Wright* v. *Nagle,* 101 U. S. 791.) Accordingly, it has no application to the case at bar.

Such instrumentalities were fully considered in the case of *Metcalf* v. *Mitchell,* as the court in that opinion refers to the case of *Gillespie* v. *Oklahoma,* 257 U. S. 501, which involved the validity of a state income tax upon the net income received by a federal instrumentality from the sale of his share of the oil and gas produced from restricted Indian land. Furthermore, the opinion in the *Metcalf* case clearly shows that it also fully considered the *Peniston* case as it is referred to therein and distinguished from the *Gillespie* case. We think it is evident that the case of *Metcalf* v. *Mitchell* is controlling in this case, as the court did not apply the rule announced in the *Peniston* case when it was considered in connection with a governmental instrumentality created and controlled by the government to enable it to produce oil and gas from restricted Indian land.

Point Two.

An agency created and controlled by the federal government to enable it to develop restricted Indian land for oil and gas is of such a character and so intimately connected with the performance of the functions of government that it is immune from state taxation and the immunity extends to the property used in its operations.

—*Metcalf* v. *Mitchell,* 269 U. S. 514;
Gillespie v. *Oklahoma,* 257 U. S. 501;

Choctaw O. & G. R. Company v. *Harrison*, 235 U. S. 292;

Jaybird Mining Company v. *Weir*, 271 U. S. 609;

Indian Territory Illuminating Oil Company v. *Oklahoma*, 240 U. S. 522;

Large Oil Company v. *Howard*, 248 U. S. 549;

Howard v. *Gypsy Oil Company*, 247 U. S. 503.

COMMENT:

While it was said in the case of *Metcalf* v. *Mitchell*, 269 U. S. 514, that it was not possible to state in terms of universal application just what instrumentalities of one government are exempt from taxation by the other, the court in that case announced certain rules to be used in determining the question of tax exemption and classified the instrumentalities involved in the cases referred to in that opinion in accordance with those rules. In that case the court classified an agency created and controlled by the federal government to develop restricted Indian land for oil and gas as not being subject to any taxation by the states, as it was said in the opinion that those agencies through which either government immediately and directly exercises its sovereign powers are so intimately connected with the necessary functions of government that they are immune from the taxing powers of the other, and that

"when the instrumentality is of that character, the immunity extends not only to the instrumentality itself but to income derived from it *(Pollock* v. *Farmers' Loan & T. Co.* and *Gillespie* v. *Oklahoma, supra)* and forbids an occupation tax imposed on its use *(Choctaw, O. & G. R. Co.* v. *Harrison*, 235 U. S. 292, 59 L. ed. 234, 35 Sup. Ct. Rep. 27; and see *Dobbins* v. *Erie County, supra).*",

and also that

> "any taxation by one government of * * * an agency created and controlled by the other, exclusively to enable it to perform a governmental function *(Gillespie* v. *Oklahoma, supra)* is prohibited."

The governmental agency involved in the case of *Gillespie* v. *Oklahoma,* 257 U. S. 501, which was referred to in the *Metcalf* case and classified as being immune from the taxing power of the states was created and controlled by the federal gocernment to enable it to develop restricted Indian land for oil and gas, and as we endeavored to point out in our original brief, the nature of that agency and its mode of constitution and the purpose for which it was created by the government is identical with the agency in this case.

The only difference between the *Gillespie* case and this case is in the character of the property of the agent sought to be taxed. In a number of cases involving identical or similar governmental agencies the State of Oklahoma heretofore attempted to tax *(a)* leases covering restricted Indian land *(Indian Territory Illuminating Oil Company* v. *Oklahoma,* 240 U. S. 522); *(b)* the gross receipts from the total production of coal produced from Indian land *(Choctaw O. & G. R. Company* v. *Harrison,* 235 U. S. 292); *(c)* the gross value of the production of oil and gas less the Indians' royalty interest under leases made for the benefit of the Indians *(Large Oil Company* v. *Howard,* 248 U. S. 549; *Howard* v. *Gypsy Oil Company,* 247 U. S. 503); *(d)* the net income derived by lessee from the sale of his share of oil and gas produced from leases covering restricted Indian land *(Gillespie* v. *Oklahoma,* 257 U. S. 501); and *(e)* on an ad valorem basis

ore in the possession of a lessee produced from restricted Indian land under a departmental lease (*Jaybird Mining Company* v. *Weir*, 271 U. S. 609).

In each of those cases the tax was condemned as an attempt to tax an instrumentality used by the United States in fulfilling its duties to the Indians, and not because of the character of the property sought to be taxed. (*Jaybird Mining Company* v. *Weir*, 271 U. S. 609.)

The property sought to be taxed in the cases of *Indian Territory Illuminating Oil Company* v. *Oklahoma, Choctaw, O. & G. R. Company* v. *Harrison, Large Oil Company* v. *Howard*, and *Howard* v. *Gypsy Oil Company* was different than the property involved in the *Gillespie* case. All of those cases were referred to and discussed in the *Gillespie* case, and doubtless were considered by the court in the *Metcalf* case, wherein the agency in the *Gillespie* case was classified as being immune from taxation not because of the character of the property sought to be taxed, but because it was an agency created and controlled by the government exclusively to enable it to perform a governmental function.

We submit it is clear that when the *Metcalf* case is considered in connection with the other cases above referred to that federal agencies of the character involved in those cases and in this case are immune from the taxing power of the states, and that the immunity is absolute and extends not only to the instrumentalities and to the oil and gas produced and the income derived from it, but also to the personal property used by the agency to enable it to perform its governmental function to produce oil and gas from restricted Indian land.

Point Three.

The ad valorem tax sought to be levied by the State of Oklahoma upon the equipment used by respondent in its operations as an instrumentality created and controlled by the federal government to produce oil and gas from restricted Indian land would impose a direct burden upon the functions of government.

—*Metcalf* v. *Mitchell*, 269 U. S. 514;
Burnet v. *Jergens Trust*, 288 U. S. 508;
Large Oil Company v. *Howard*, 248 U. S. 549;
Howard v. *Gypsy Oil Company*, 247 U. S. 503.

Comment:

When the effect of the tax sought to be imposed by the State of Oklahoma upon the equipment used by respondent is considered, the necessity for the rule announced in the case of *Metcalf* v. *Mitchell*, 269 U. S. 514, to the effect that such instrumentalities are immune from the taxing power of the states because they are of such a character and so intimately connected with the exercise of a power and the performance of duty by the government, becomes apparent.

The federal government acting as trustee of an express trust (*Burnet* v. *Jergens Trust*, 288 U. S. 508) leased restricted Pawnee Indian land to respondent in order to secure the development thereof for oil and gas for the benefit of the Indian owners.

The government required respondent under the terms of the lease to *(a)* develop the land under the direct supervision of the Secretary of the Interior (Lease, Section 8, R. 35); *(b)* pay to the United States officer having jurisdiction of the leased premises for the benefit of the Indian owners

the sum of 12½% of the gross proceeds of all crude oil extracted from the land, and a certain designated sum as royalty on each gas producing well (Lease, Section 2, R. 31); *(c)* furnish the Indian owners free gas for domestic purposes, provided surplus gas was produced from the premises (Lease, Section 2, R. 32); *(d)* grant a lien on all improvements, tools, machinery, and all other personal chattels used in operating the leasehold, as security for the payment of the royalty (Lease, Section 6, R. 35); and *(e)* agree that any buildings or permanent improvements erected on the leasehold by it should become the property of the Indian owners (Lease, Section 5, R. 34).

Thus it will be seen that the equipment sought to be taxed in this case is not used by the respondent exclusively for its own benefit and solely for its own profit, but is also used for the benefit of the Indian wards of the government and so they may receive an income from the oil and gas underlying their land. It is used by the respondent under the supervision of the government to enable it to perform a governmental function.

If the State of Oklahoma has the power to impose an ad valorem tax on the equipment used by a federal instrumentality to produce oil and gas from restricted Indian land, it has the power to sell the same if the tax is not paid. It is obvious that the right to operate a restricted Indian oil and gas leasehold could not, by virtue of the state's taxing powers, be transferred from the instrumentality to the purchaser of the equipment at a tax sale. Such purchaser would have no right or authority to leave the property on the restricted Indian land, or use it to operate the wells, and would be required to pull the casing from the wells, dismantle the

derricks, and remove the equipment from the leasehold. This would result in direct interference with the functions of government itself as it would destroy the lien on the equipment and ruin the producing wells, thereby defeating the purpose of the government to provide a royalty income for its Indian wards, and depriving the instrumentality of the power to serve the government as it was intended to serve it.

Each day's operation of an oil well depletes the oil in the underground reservoir from which it is being produced. The amount of the production gradually declines until the well is not capable of producing sufficient oil to provide a profit over and above the costs of operation, thus forcing the operator to plug and abandon the well. Hence, an ad valorem tax by the State of Oklahoma on the equipment used by respondent would directly interfere with the functions of government as it would increase the cost of operation and force respondent to abandon the wells when the amount of the tax equals the amount of the profits received by respondent from the sale of its share of the oil produced. The amount of the tax involved in this case is approximately $700.00. Sooner or later, due to decline of production, respondent's profits from the lease will not exceed that sum. Thus, while the lease would be capable of producing annually, oil of the value of approximately $700.00, and the Indian wards of the government would be entitled to receive as royalty 12½% thereof, respondent would be unable to operate at a profit solely because of the tax. It certainly could not be expected to operate the lease at a loss in order to pay the Indians the royalty and the state the tax. It is evident, therefore, that the tax would

impose a direct burden upon the functions of government by depriving the Indians of their royalty income and forcing the respondent to abandon the wells at an earlier date than would otherwise be necessary.

The power of the State of Oklahoma to tax the net income received by a federal instrumentality from the sale of its share of oil and gas produced from restricted Indian land *(Gillespie* v. *Oklahoma),* or to impose a tax upon the gross value of the production of oil and gas, less the Indians' royalty interest *(Large Oil Company* v. *Howard, Howard* v. *Gypsy Oil Company),* has been denied by this court. In denying the right of the state to tax the net income, it was said by the court that "a tax upon such profits is a direct hamper upon the efforts of the United States to make the best terms that it can for its Indian wards."

It is manifest that an ad valorem tax upon the equipment used by such an instrumentality would impose a greater burden and hamper the government in a greater degree than would a tax upon the net income. A tax upon the net income does not arise at all unless a profit is shown over and above all proper development costs, expenses and losses, and the tax cannot be heavy unless the profits are large. The burden of an ad valorem tax on the lessee's equipment is more substantial and direct than a tax upon the net income. It is laid irrespective of whether the equipment is being used to produce a profit or otherwise, and may be extended to such limits that oil and gas could only be produced at an actual loss, thus forcing the instrumentality to abandon the wells to the detriment of the Indian wards of the government.

It is obvious that an ad valorem tax imposed upon the equipment would diminish the instrumentality's net income as would a tax imposed upon the net income itself. Thus, such a tax amounts in substance and fact to a tax not only upon the net income but also the gross income of the instrumentality and upon its share of the oil and gas produced, which was prohibited by this court in the *Gillespie* and *Howard* cases.

The Indian wards of the government had no interest whatever in the net income of the instrumentality sought to be taxed in the *Gillespie* case, or in the oil and gas sought to be taxed in the *Howard* cases. In this case the equipment sought to be taxed is used to produce a royalty income for the Indian wards, and it follows that any taxation thereof by the State of Oklahoma, which could result in depriving the Indians of their royalty income, or destroying their lien on the equipment, would directly hamper the United States in its efforts to secure the development of restricted Indian land for oil and gas, and is, therefore, beyond the taxing power of the state.

Point Four.

Where immunity of a federal instrumentality from state taxation exists, it is not affected by the amount of the tax, or the extent of the resulting interference, but is absolute.

Fox Film Corporation v. *Doyal,* 286 U. S. 123;

Indian Motorcycle Company v. *United States,* 283 U. S. 570;

Trinityfarm Construction Company v. *Grosjean,* 291 U. S. 466;

Metcalf v. *Mitchell,* 269 U. S. 514;
Gillespie v. *Oklahoma,* 257 U. S. 501.

COMMENT:

In the case of *Fox Film Corporation* v. *Doyal,* 286 U. S. 123, it was said:

> "Where immunity of federal instrumentalities from state taxation and of state instrumentalities from federal taxation exists, it is absolute, resting upon an entire absence of power."

The immunity exists where a direct burden is laid upon the governmental instrumentality *(Fox Film Corporation* v. *Doyal).* It exists in this case because the instrumentality involved herein was created and has been at all times and is now controlled by the government to enable it to produce oil and gas from restricted Indian land, and is, therefore, so intimately connected with the exercise of a power and the performance of a duty by the federal government that any taaxtion of it by the state would result in direct interference with the functions of government itself *(Metcalf* v. *Mitchell* and *Gillespie* v. *Oklahoma).*

Where the doctrine applies as in this case, it does not depend upon the amount of the tax, or the extent of the resulting interference *(Indian Motorcycle Company* v. *United States)* but is absolute, and, therefore, extends to the personal property used by the respondent to produce oil and gas from restricted Indian land.

Point Five.

Agencies employed by the federal government to produce oil and gas from restricted Indian land are not subject to taxation by state authorities without congressional consent.

—*Shaw* v. *Gibson-Zahinser Oil Corporation*, 276 U. S. 575;

Jaybird Mining Company v. *Weir*, 271 U. S. 607.

Comment:

We think it apparent from the above decisions that without congressional consent no federal agency created and controlled by the government to enable it to produce oil and gas from restricted Indian land can be taxed by state authority.

Congress has authorized the State of Oklahoma to impose a gross production tax upon oil and gas produced from the Osage nation, all minerals produced from Quapaw Indian lands, and upon all minerals, including oil and gas, produced from restricted allotted lands of members of the Five Civilized Tribes in Oklahoma, which tax is in lieu of an ad valorem tax on the equipment used to produce the oil and gas, but Congress has never authorized the State of Oklahoma to impose a gross production tax upon oil and gas produced from restricted Pawnee Indian land, or an ad valorem tax upon the equipment used for that purpose. When such taxation will be permitted is a matter entirely within the discretion of Congress.

Point Six.

The decisions referred to by petitioner are not controlling in this case and do not establish the rule that the immunity of a federal instrumentality from state taxation cannot under any circumstances be extended to personal property used in its operations.

Comment:

None of the cases relied upon by petitioner involve property used by an instrumentality of the federal government to secure a royalty income for its Indian wards. A number of the cases do not involve governmental instrumentalities, and in others the property sought to be taxed was used by the agencies exclusively for their own benefit and solely for their own profit, and while they had received privileges from the government, they were not privileges to be exercised on behalf of the government, but solely on their own behalf.

In *Federal Compress Company* v. *McLean,* 291 U. S. 17, it was said that appellant's license under the Warehousing Act did not confer upon it immunity from state taxation, for neither the appellant nor its business was, by force of the license, converted into an agency of the government, and that the appellant in the enjoyment of the privilege granted, was engaged in its own behalf, not the government, in the conduct of a private business for profit. In *Susquehanna Power Company* v. *State Tax Commission,* 283 U. S. 291, it was not held that the power company was a federal instrumentality, but the court assumed, for the purpose of the opinion, that its license was an instrumentality, and held that property employed in the exercise of a privilege created by the government for private business advantage was not exempt from state taxation.

Alward v. *Johnson,* 282 U. S. 509, involved a state tax upon the gross revenue received by the owner of an automotive stage line, who transported the United States mail under contract with the government. The government had no interest whatever in the property used to transport the mail, or in the gross receipts, or the benefits derived from the performance of the contract. In that case the contract was the means employed for carrying into execution the powers of the government, and the contract alone, and not the contractor, was exempt from taxation or other interference by the state. But where, as in the case at bar, the instrumentality is created and controlled by the government in order to enable it to produce minerals from restricted Indian land, it is of such a character that not only the lease, but also the lessee and the property used in its operations are the instrumentalities employed by the government for carrying into execution the powers of government, and in such a case neither the lessee's net income, nor its share of the minerals produced are subject to state taxation. *(Gillespie* case and *Howard* cases.)

In *Thomas* v. *Gay,* 169 U. S. 264, and *Wagoner* v. *Evans,* 170 U. S. 588, certain parties placed cattle on a portion of the Osage Indian reservation under the authority of a duly approved grazing lease. The Territory of Oklahoma imposed a tax on the cattle which were owned by the lessees. It is obvious that the tax did not affect the Indians as it was not imposed on the business of grazing, or on the rents received by the Indians, but solely upon the cattle in which the Indians had no interest whatever. The Indians were only interested in receiving the rentals payable under the leases, which accrued regardless of whether the lessees

placed any cattle on the land, or took advantage of the grazing privileges granted. It is clear in this case that the lessees were not performing a governmental function under the direct supervision of the government, but were exercising the privileges granted by the leases for their own advantage and not for the benefit of the government or its wards.

In *Baltimore Ship Building Company* v. *Baltimore,* 195 U. S. 375, neither the company nor the property involved therein were instrumentalities of the United States. (See *Long* v. *Rockwood,* 277 U. S. 142; overruled on other grounds, 286 U. S. 123.) Furthermore, it was held in the opinion while the rights of the government could not be extinguished by the state that as the fee was in the Ship Building Company, it could be taxed, and if necessary sold, subject to the rights of the government. It is obvious that this case is not in point as it did not involve a federal instrumentality and the equipment used by lessee of restricted Indian land could not be sold for taxes and removed from the leasehold without ruining the producing wells. The tax sale purchaser could not use the equipment to operate the lease as it is a federal instrumentality and is not subject to state taxation. *(Indian Territory Illuminating Oil Company* v. *Oklahoma,* 240 U. S. 522.) Accordingly, he could not acquire title to the lease by purchasing the equipment at a tax sale.

The case of *Choctaw, Oklahoma and Gulf Railroad Company* v. *McKey,* 256 U. S. 531, did not involve an agency which was created and controlled by the government exclusively to enable it to perform a governmental function. As was said in that case, "The most that can be said here is that, among the public served by this railroad, are some

mines leased from the Choctaw nation." In *Indian Territory Illuminating Oil Company* v. *Board of Equalization*, 288 U. S. 325, it was held that oil which had been segregated and withdrawn from restricted Indian lands as the lessee's exclusive property was for its sole advantage and could not be so identified with its operations as a governmental instrumentality to entitle it to exemption from state taxation. The equipment used to produce the oil was not involved in that case.

Respondent is not using the equipment to develop the leasehold for its sole advantage, but is using it to perform a govermental function. Its relation to the government is not that of an independent contractor. It is an instrumentality of the government and is required to develop the leasehold under the direct supervision of, and in accordance with, all the regulations now or hereafter prescribed by the Secretary of the Interior governing oil and gas operations on restricted Indian land. It is required to comply with the methods of operation specified in the regulations and by inspectors who supervise its operations on the leasehold, and cannot commence any operations thereon without first notifying the representative of the Secretary of the Interior and receiving his approval of the contemplated work.

We respectfully submit that it is very clear that a state ad valorem tax on equipment used by respondent to produce oil and gas from restricted Indian land would impose a greater burden upon the exertion of governmental powers than the taxes imposed in the cases relied upon by petitioner and those cases are not controlling in this case.

Neither the case of *Union Pac. R. R. Co.* v. *Peniston*, 85 U. S. 5, nor the other cases referred to by petitioner

establish the rule that regardless of the circumstances involved, or the nature of the instrumentalities, personal property used in its operations is always subject to state taxation. The *Peniston* case and some of the other cases referred to were considered in the case of *Metcalf* v. *Mitchell,* 269 U. S. 514, and were classified therein as being at "the other end of the scale" from the *Gillespie* case. Thus, it is apparent that the character of the instrumentalities involved in those cases and in this case are entirely different. In those cases the contracts were the means employed for carrying into execution the powers of the government, and the contracts alone, and not the contractors, were exempt from taxation by the states. In this case the agency was created and controlled by the government exclusively to enable it to perform a governmental function, and is of such a character that not only the contract, but also the agent and the property used in its operations are federal instrumentalities, and are, therefore, exempt from state taxation.

Conclusion.

We, therefore, respectfully submit that the contention of petitioner is without merit and the decision of the Supreme Court of the State of Oklahoma should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 280.—October Term, 1936.

George W. Taber, Treasurer of Payne County, Oklahoma, Petitioner, *vs.* Indian Territory Illuminating Oil Company. } On Writ of Certiorari to the Supreme Court of the State of Oklahoma.

[February 1, 1937.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The respondent, Indian Territory Illuminating Oil Company, holds an oil and gas lease covering lands of restricted Pawnee Indians. The question relates to the constitutional authority of the State of Oklahoma to tax certain property used by the respondent in its operations as lessee. The Supreme Court of Oklahoma held that the property was not taxable because the lessee was a federal instrumentality and Congress had not consented to its taxation. 177 Okla. 67. We granted certiorari. October 12, 1936.

The property is described as "one dwelling, portable, one garage, one tool house, engines, pump, water well equipment, tanks, derricks, casing, tubing, rods, pipe-lines, and one trailer truck, of the aggregate value of $15,869.23". The tax is an *ad valorem* tax for the year 1933-34. There is no allegation or finding that the tax was discriminatory, the sole contention being that the property was not subject to *ad valorem* taxation because of its use as an adjunct to the production of oil and gas from the leasehold.

Our decisions distinguish between a non-discriminatory tax upon the property of an agent of government and one which imposes a direct burden upon the exertion of governmental powers. In the former case where there is only a remote, if any, influence upon the exercise of governmental functions, we have held that a non-discriminatory *ad valorem* tax is valid, although the property is used in the operations of the governmental agency. This distinction, recognized by Chief Justice Marshall in *McCulloch* v. *Maryland*, 4 Wheat. 316, 436, was stated and applied after full consideration in *Thomson* v. *Pacific Railroad*, 9 Wall. 579, 591, and *Railroad Com-*

pany v. *Peniston*, 18 Wall. 5, 31-36. Recent illustrations are found in *Alward* v. *Johnson*, 282 U. S. 509, 514, where the tax which was sustained was laid upon property used in operating an automotive stage line between points in California under a mail carrier's contract; and in *Tirrell* v. *Johnston*, 293 U. S. 533, where a tax known as the "gasoline road toll" was held to be payable by a rural mail carrier who delivered the mail by means of his own motor vehicle. See, also, *Thomas* v. *Gay*, 169 U. S. 264, 273; *Baltimore Shipbuilding Co.* v. *Baltimore*, 195 U. S. 375, 382; *Choctaw O. & G. R. R. Co.* v. *Mackey*, 256 U. S. 531, 536, 537; *Willcuts* v. *Bunn*, 282 U. S. 216, 226; *Susquehanna Power Co.* v. *Texas Commission* (*No. 1*), 283 U. S. 291, 294; *Eastern Air Transport* v. *Tax Commission*, 285 U. S. 147, 153.

In *Indian Territory Illuminating Oil. Co.* v. *Board of Equalization*, 288 U. S. 325, an *ad valorem* tax upon crude oil, held by the company in its storage tanks, was sustained against the claim that the oil was exempt because in its production the taxpayer was operating as an instrumentality of the United States. There the taxpayer relied, as does the state court here, upon the ruling in *Jaybird Mining Co.* v. *Weir*, 271 U. S. 609, where an *ad valorem* tax upon ores mined under a lease of restricted Indian land and in the bins on that land was held to be invalid. But we pointed out that in the *Jaybird* case the tax "was assessed on the ores in mass; and the royalties and equitable interests of the Indians had not been paid or segregated". *Indian Territory Illuminating Oil Co.* v. *Board of Equalization, supra*, p. 327. In those circumstances the tax was regarded as an attempt to tax an agency of the federal government. Emphasizing that distinction, we said in reference to the *Indian Territory Illuminating Oil Company*: "Such immunity as petitioner enjoyed as a governmental instrumentality inhered in its operations as such, and being for the protection of the Government in its function extended no farther than was necessary for that purpose". *Id.*, p. 328.

In that view, the immunity cannot be said to extend to a nondiscriminatory *ad valorem* tax upon the property of the petitioner which is involved in the instant case. The judgment is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

Is is so ordered.